CODE OF UNREPEALED

CIRCULAR ORDERS

OF THE

LATE SUDDER COURT OF CALCUTTA,

(CIVIL SIDE)

INCLUDING CIRCULARS OF THE SUDDER COURT, N. W. P.,

WITH

Marginal Abstracts, Foot-Notes, and Alphabetical and Chronological Indexes.

PUBLISHED WITH

THE PERMISSION OF THE HIGH COURT.

BY

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CORRIGENDA.

At page 34, foot-note, line 3: for "No. 184," read "No. 164."

At page 38, under ATTORNEY (POWERS OF,) in margin for "7th July 1857," read "7th July 1851," and for "5th August," read "15th August."

At page 58, in 3rd line from top, after "Act XX of 1841," read with foot-note "Repealed and superseded by Act XXVII of 1860."

At page 61, in 5th line from top, omit the word "and."

At page 89, foot-note, for "Plus 6 annas on account of the Sheriff's native officer" read "Plus Rs. 2 on account of the Sheriff's European officer, or 6 annas on account of his Native officer."

At page 91, under FINES, in first marginal abstract for "8th May" read "4th May."

At page 100, in the second marginal abstract for "1851" read "1845."

At page 119, in 20th line from top for "intended" read "extended."

At page 137, in 3d marginal abstract for "15th January," read "17th January."

At page 187, under SMALL CAUSE COURTS, in 2d line understand the asterisk over "Section 20 Act XLII of 1860" to point to the foot-note on the next page (188) *viz* "Now section 46 Act XI of 1865."

PREFACE.

A new edition of the Circular Orders of the late Sudder Court of Calcutta appears to be a *desideratum*. The last authorized edition of those Circulars, *viz.*, that published by Mr. Carrau in 1853, is out of print, and the annual reprints in pamphlet form of the Circulars of later years are not easily procurable; while the copies of those editions, which are still available, are of but little use owing to a very large number of the Circulars having become obsolete: some having been formally rescinded, still more having been originally based on laws which have themselves been repealed without being re-enacted, and others again being wholly inapplicable to present procedure or existing circumstances. On the other hand a considerable portion of the Sudder Circulars are still in force, and no small part of the practice of the Courts still follows the course there indicated.

The present work is an attempt to codify such of the Circular Orders of the late Sudder Court of Calcutta as are still in force. Of course it is not a Code, in the full and proper sense of that term, for *that* could only emanate from the same authority as the Circulars themselves; but it is an effort, by approximation to the form of a code, to secure some of the practical advantages of such a compilation.

The Circulars or portions of Circulars relating to one subject are grouped together, and the subjects themselves arranged in alphabetical order. The paragraphs under each subject are consecutively numbered, and to nearly every paragraph there is a brief marginal note connecting it with an *alphabetical index* at the end of the work. There are also foot notes indicating later orders of the High Court, by which the orders in the text have been modified or supplemented; and later acts of the legislature by which the laws, forming the basis of the Sudder Court's Circulars, have been superseded. Where these last have been repeal-

ed carrying away altogether the superstructure built upon it by the Sudder Court, the Circular order has not been reproduced; the reproduction in such cases being restricted to those instances in which the repealed provision of law has either not carried away with it the Circular Order or has been re-enacted in a later law which is duly indicated.

Besides the Alphabetical Index of subjects there is a *Chronological* one, complete as to Circulars contained in the work, where are also indicated the particular Circulars which emanated equally from the late Sudder Court of the N. W. Provinces.

As some of the circulars in the first portion of the work, which is properly *Civil*, were addressed also to the *Criminal* authorities, and are equally applicable to the latter, they have been distinguished in the Chronogical Index by the word "criminal." These are of course such as relate to both Civil and Criminal Courts, as distinguished from those of the second part constituting a distinct volume, which relates to Criminal Courts exclusively.

General Rules and Circular Orders

OF

THE LATE SUDDER COURT

(CIVIL SIDE.)

ACT XL. OF 1858.

Circular Order No. 150.
Dated 31*st August*, 1859.
Forms of Certificate under Act XL. of 1858.

In supersession of Circular Order No. 10, dated the 30th May last, * the Court are pleased to prescribe the subjoined Forms of Certificate for use in cases under Act XL. of 1858.

A.

Form of Certificate under Section 7 *Act XL. of* 1858.

Whereas this Court has, under the provisions of Section 7 Act XL. of 1858, been pleased to appoint you, A. B. to administer to the estate of C. D., at present a minor, during the period of his minority, subject to the power of revocation vested in the Court by Section 21 of the Act aforesaid, you are hereby authorized to take charge of the property of the minor in trust, to collect and pay all just debts, claims, and liabilities due to, or by the estate of the minor, to institute or defend suits connected with that estate, and generally to do and perform all acts which may be necessary to the due discharge of the trust vested in you: provided always that you shall not sell or mortgage any part of the estate belonging to the minor, and that you shall not grant any lease for a term exceeding five years, without the express sanction of this Court previously obtained; and that you shall keep regular accounts of your receipts and disbursements with all vouchers and other documents necessary to establish their correctness. (If the person administering is himself appointed guardian, then it should be "you are hereby further appointed guardian of the minor's person, and authorized to expend Rs. monthly on account of his maintenance and education.")

* Never printed.

B.

Form of Certificate under Section 10 Act XL. of 1858.

Whereas this Court has, under the provisions of Section 10 Act XL. o 1858, appointed you A. B. to be public curator (or administrator) of the personal estate, including houses, gardens, and the like belonging to C. D., a minor, and to continue to administer to such estate during his minority at a salary of Rs. , or commission at per cent. on all sums received and disbursed by you on account of the minor, subject to the power of revocation vested in the Court, you are hereby authorized to take charge of the aforesaid minor's property, to institute and defend all actions in connection with the property, and to do and perform all acts necessary to the due discharge of the trust vested in you ; you are to deliver into this Court, within six months from this date, an inventory of the immoveable property belonging to the said C D. and of all such sums of money, goods, and effects as you may have received on account of his moveable estate, together with a statement of all debts ascertained, or believed to be due to the said estate.

You are within three months after close of the current year and of every succeeding year that you shall retain charge of the property of C. D., and also within three months of the termination of your trust, to furnish to this Court, an accurate account of the property in your charge, and the sums received and disbursed on account thereof, and the balance in hand, together with the vouchers and other documents necessary to support the account. You are to exercise the same powers, in regard to the management of the said property as might be exercised by the proprietor, were he not a minor, and to collect and pay all just debts on account thereof. But you are not to sell, or mortgage any part of the immoveable property, nor to grant any lease thereof for a term exceeding five years without the express orders of this Court, previously obtained. You are hereby further authorized to pay Rs. monthly on account of the minor's education and maintenance to X. Y. Z., appointed his (or her) guardian under the orders of this Court dated

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C.

Form of Certificate under Section 7 or Section 11 Act XL. of 1858.

Whereas under Section 7 (or Section 11) Act XL. of 1858, you have been appointed to be guardian of C. D., now a minor, during the period of his minority or until this certificate be revoked, you are hereby required to take charge of the person of the said minor, and to provide suitably for

his maintenance and education, for which purpose you will receive from the public curator (or administrator of the estate) a monthly sum of Rs. and you are hereby authorized to receive a personal allowance of Rs. per mensem as a remuneration for your trouble and responsibility.

ACT VIII. OF 1859.

Circular Order No. 138.
Dated 22nd June, 1859.
New duty imposed on Courts.
Examination of plaint prior to registry.

The Court call the attention of the Zillah Judges to the necessity of impressing upon the Subordinate Courts the new duty imposed upon all Courts of original jurisdiction by the provisions of Act VIII. of 1859, which comes into operation on the 1st proximo. Under the law now passing away, the parties themselves have been required to carry on their respective cases through the preliminary stages without the direct interference of the Court itself. But under the new Code of Procedure a new principle is introduced, and the Court is required to examine the plaint, and determine upon the advisibility of the suit before registering it in the book directed to be kept for the purpose. In like manner no summons for the appearance of the defendants or other processes during the progress of the case, can issue without the direct order of the presiding Judge.

Issue of processes.

2. These are matters which must not be lost sight of from the moment the Code comes into operation. The Court, therefore, wish the Zillah Judges to draw the immediate attention of their subordinates to the difference of practice which will at once ensue, and the necessity it will create of *personally* superintending the progress of a case, and of so regulating the attendance of parties and witnesses as to avoid confusion, and at the same time to take up the cases in their proper order of routine.

Necessity of personal superintendence, of regulating attendance, of parties, &c. and taking up cases in routine.

3. The following Circular under date the 22nd ultimo has been issued by the Western Court, and is concurred in by this Court also :—

Circular Order No. 144.
Dated the 7th July, 1859.

I. "The Court are pleased to call the attention of the Civil Authorities to Act VIII. of 1859 'for simplifying the procedure of the Civil Courts not established by Royal Charter,'* which will come into operation on the 1st July next. From that date the procedure of the Civil Courts will be governed by that Act only except in the case of a pending suit in which it may appear to the Court that the application of the provisions of the Act would deprive any party of a right in which case provision is made by Section 387 for the adoption of the rules previously in force.

Act VIII. of 1859.
From what date operative and in what cases inapplicable.

II. "The rules of the Code are so clearly expressed that the Court believe that no Native Judge, who carefully considers them with reference to the various points in which they differ from the present rules of practice, can fail to understand the new procedure. At the same time the Court are of opinion that it would be advisable when it can be done for the Zillah Judge to assemble the Native Judges, and discuss with them *seriatim* the rules of the new Code and the points on which it differs from the old law.

Rules of the Procedure Code.

III. "The Court would more particularly call the attention of the Judges to Chapter III. which treats 'of a suit till final decree.' It will be observed that the Act entirely dispenses with

Pleadings dispensed with.
Issues how to be gathered.

* Act VIII. of 1859 was extended to the Calcutta High Court by Section 37 of the Letters Patent (Royal Charter) of 1861 establishing that Court. See also Section 37 of the Letters Patent of 1865.

the series of pleadings required by the present law, and although it admits of brief written statements of facts being received by the Courts at the first hearing, it evidently contemplates that the issues of law and fact should be gathered from the oral examination of the parties, or other authorized persons who may be able to attend, in order to answer questions on their behalf, rather than from the written statements prepared by pleaders. In the generality of cases, which come before a Sudder Ameen or Moonsiff, the Court have no doubt that the facts will be better ascertained from the oral examination of such parties confronted with each other than by plausible written statements of professional pleaders.

Court's duty on first institution of a suit.
Examination of plaint.
Issue of summons.

IV. "The Court remark that more labour will devolve on the presiding Judge, at the first institution of the suit, under the new Code than under the old procedure. It is, however, calculated in the end to save both time and trouble. On receipt of the plaint it will rest with the Court to see that it is properly drawn up that it discloses a cause of action and a subsisting right of action, and that the Court has jurisdiction; in issuing summons to the defendant, the Courts are called on to determine whether the summons shall be for the settlement of issues, or for the final disposal of the suit. This will require the exercise of a sound discretion on the part of the presiding officer as well as sufficient acquaintance with the leading points of the case.

V. "The Court think it probable that at first some opposition and difficulty will be experienced in the practical working of this Chapter. Parties will endeavour to avoid personal attendance, and pleaders will be loathe to give up their habit of writing diffuse and argumentative statements. But the Court trust to the vigilance of the Zillah Judges to see that the fundamental principle of the Code, *viz.*, the ascertainment of the matter in dispute from the oral statements of the parties

themselves, instead of from garbled and diffused pleadings, be fully carried out in practice.

VI. "The Court expect the Zillah Judges in reviewing appeals from the decision of their subordinates, carefully and promptly to notice any material deviation on their part, from the course of procedure prescribed by this Act, and in reporting upon their official conduct at the end of the year, prominently to bring before the Court the names of those Native Judges whose proceedings may appear to have evinced the greatest intelligence and attention in giving effect to the terms of the Act, according to its spirit and intent, or the reverse. The Zillah Judges should also act on this rule when they receive for deposit in their record offices the misls of cases first decided under the provisions of this Act.

Zillah Judges to notice deviations from prescribed procedure, and report how it is carried out.

VII. "Instruction will shortly be issued in regard to the modifications rendered necessary by this law in the forms of the present quarterly and annual statements and civil processes, but the Court direct the immediate preparation in every Civil Court, of a register of Civil suits in the form prescribed by Schedule A. of the Act, the form of summons (Schedule B) will forthwith be adopted, and each Appellate Court will prepare and keep up the Register of appeals prescribed by Schedule C."

Forms of periodical statements, &c. Registers of suits and appeals.

4. In order to prevent as far as possible any diversity of practice in carrying out the provisions of Act VIII. of 1859, the Court are pleased to direct attention to the following points:—

Circular Order No. 147. *Dated the* 29*th July*, 1859.

5. As all suits are in future to be instituted in the Court of the lowest grade competent to try them,* it follows that they can rarely, if ever, be instituted in the Courts of the Judges or Additional Judges.

Suits to be instituted in Courts of lowest grade

* Section 6.

6. These Courts, however, continue to possess the power of withdrawing suits instituted in the Subordinate Courts, and trying them in their own, whenever they may see sufficient cause for doing so. This power affords them opportunities of instructing the lower Courts practically in the procedure of the new Code which the Court expect that they will not neglect.

May be withdrawn to Zillah Court. Section 6.

7. The institution of a second suit in another Court for the same cause of action during the pendency of the first suit is, you will observe, no longer punishable by dismissal of the socond suit, as was the case under Section 12* Regulation III. of 1793; but under Section 6 of the Code, the superior Courts have the power of transferring such second suit to the Court in which the first suit is being tried.

Second suit for same cause of action.

8. The misjoinder of two or more causes of action also no longer subjects the plaintiff to a nonsuit. Under Section 9 of the Code, the Court will, in such cases, direct that those causes of action which cannot conveniently be tried together shall be tried as separate suits. It will be necessary to take care in these cases, however, that the original institution fee is sufficient to cover all the different causes of action in the plaint.

Misjoinder.

9. Upon a plaint being presented, the Judge or other presiding officer should note, or cause to be noted on the back the date of presentation, and whether it has been presented by the plaintiff in person or by his authorized agent or pleader.

Presentation of plaint.

10. He should then examine the plaint carefully to see that it contains the particulars specified in Section 26 that it is not

Examination thereof. †

* Repealed by Act X. 1861.

† Vide High Court's C. O. No. 10, dated 19th May, 1865.

unnecessarily prolix, and that it is verified in the manner directed in Section 27.

Verification.*

11. The personal attendance of the plaintiff in Court for the purpose of verification is unnecessary. He may make the verification, and sign the plaint where he pleases. He must present it, however, in Court, either in person, or through a duly appointed pleader, unless he is not within the jurisdiction of the Court, in which case alone he is authorized under Section 16 to appear by a recognized agent. The pleader must sign the plaint, but is not required to verify it. In all these cases the plaintiff, however, is responsible for the statements contained in his plaint.

12. Under Section 28 the Courts, in the event of plaintiff's absence, or for other good cause, may allow the verification to be made by any person they consider competent. Care must be taken, however, that this provision is not abused. Good cause must be shewn for non-verification of the plaint by the plaintiff himself, and no person should be considered competent to verify who is not *personally* acquainted which the facts of the case.

Extraneous matter to be excluded.

13. The attention of the Courts is particularly directed to the specimens of plaints contained in Section 26; and to the necessity of great firmness at first, in order to check the tendency to prolixity which the Mooktears and others, who have hitherto been in the habit of drawing up plaints, will doubtless evince. When the plaint contains any argument or anything beyond a concise statement of the points enumerated in Clauses 1, 2, and 3 of Section 26, it should invariably be returned for amendment or in extreme cases rejected.

* Continued by High Court's C. O. No. 5, dated 22nd February, 1870.

14. The presiding officer should next consider whether the plaint is inadmissible on any of the grounds indicated in Sections 8, 9, 30, 31, 32, or 33.

Its admissibility or otherwise.

15. If he finds it necessary to reject the plaint, he must record a judicial order to that effect in his own vernacular with his reasons for such order, either on the back of the plaint, on a separate paper, and the plaint with the judgment and any deposition of the plaintiff or his pleader, or authorized agent, which may have been taken, will then be deposited in the Record-room of the Court in the usual manner.

Its rejection.

16. If a plaint is returned to the party presenting it for amendment, the date of its presentation and return, the name of the party presenting it, and a concise reason for its return, such as "too prolix," or "argumentative," "no jurisdiction in this Court," &c., shall be endorsed upon it, before it is returned and signed and sealed by the presiding officer.

Its return to plaintiff.

17. A Register shall be kept of all returned, and another of all rejected, plaints in the following form :—

Registers of returned and rejected plaints.

1	2	3	4	5
Date of presentation.	By whom presented.	Ground of { Return / Rejection } concisely stated.	Date of { Return / Rejection.	Signature of Judicial Officer.

18. These Registers should be bound, the pages numbered, and each page stamped with the Court's seal. They should be filled up on the bench by the Sheristadar or other head officer

How to be prepared & filled up.

present, when the order is passed, and the Amlah should not be permitted to fill them up afterwards, or in a separate room from the presiding officer.

19. If the plaint is unobjectionable, the Court, in which it is presented, must next consider whether it is necessary to take security from the plaintiff under Section 34 or 35, or to apply to the Zillah or Sudder Court, under Sections 11, 12, or 13 for authority to proceed with the trial of the suit.

Plaints admitted.

20. If the Court considers the plaint admissible at once, an order must be recorded for its entry in Register A, and a Memorandum should also be endorsed on it, at the same time of the documents which the plaintiff has filed along with it together with the names of the persons presenting them. This is of great importance as documents, not filed with the plaint, are inadmissible afterwards except on cause shown.

Vakalutnamahs.

21. When parties claim to appear as pleaders, or authorized agents, their vakalutnamahs or powers of attorney should, where practicable, be filed in original with the plaint; where the power of attorney is a general one, a copy should be filed, and the original presented for verification.

Copies of documents filed.

22. When copies of documents are filed under Section 39. the Serishtadar or head officer of the Court will, as a general rule, compare them with the originals, and certify on the face of them that he has done so, and that they correspond. Copies of important documents, such as wills and deeds, on which suits are founded, should, however, be verified by the presiding officer himself.

23. When the order is passed for registering the plaint, the plaintiff must next deposit with the Nazir the fees necessary for the summons of the defendant or defendants, according to the table of fees suspended in the Court-room, and no process will issue until he does so

Registry of plaint. Fees.

Section 23.

24. If the plaintiff wishes the defendant to be required to produce any document, it will be observed that he must file a description of it with his plaint, in order that the summons may be framed accordingly. Under the provisions of Section 107, however, he is not precluded from serving the defendant with a notice for this purpose at a later period.

Documents how to be produced.

Section 40

25. There does not appear to be any penalty under Act VIII. of 1859 for delay in proceeding with a suit. The plaintiff, therefore, cannot be required to take out a summons within any fixed period.

No penalty for delay.

26. On the Nazir reporting that the fees have been deposited, the Court should fix a day without loss of time, for the appearance of the defendant. This is a matter which will require considerable care and attention, especially, if the parties are to appear in person, for it is very desirable that postponements should take place as seldom as possible, and that, as a general rule, causes should always be heard upon the day fixed. The date specified in the summons also ought in all cases to be so far distant as to afford the defendant ample time to prepare his defence. No general rule can be laid down on this subject, but the Court, issuing the summons, ought particularly to take into consideration the nature of the

Fixing a day for hearing. Sections 41 and 45.

case, whether simple or complicated, slight or important, and the state of its own files together with the particulars noted in Section 45.

Memoramdum Book and Cause List.

27. A Memorandum Book with columns for each Court day in the year, shewing the cause set down for trial on each date, will greatly facilitate a decision on this point, and should invariably be kept. A Cause List, setting forth the day fixed for the hearing of each cause, ought also to be suspended in the Court-room for the information of parties and their pleaders.

Nature of summons how determined.
Section 41.

28. In determining wthether the summons shall be for the settlement of issues only, or for the final disposal of the case,* the Court must, of course, be guided entirely by the nature of the suit, and the probability or otherwise of the facts stated in the plaint being disputed by the defendant on grounds which will require the production of much evidence, or will involve much forensic contention. Where the case appears simple, and it seems probable that a correct judgment can be formed at the first hearing from the examinations of the parties, or their agents, and such evidence, oral or documentary, as they can bring with them the summons will, of course, be for a final disposal of the case at the first hearing.

Personal attendance of parties. General rule on the subject.

29. Much discretion will be required in the exercise of the powers vested in the Courts by Section 42 of compelling the personal attendance of the plaintiff or defendant. On the one hand, it is important that this power should not be used so as unnecessarily to harrass suitors. On the other, it is one which, if exercised judiciously, will tend to curtail litigation, and will enable the Court to arrive at more satisfactory conclusions than would otherwise be possible. The best general rule which can be laid down on this subject

probably is, that parties should only be summoned in those cases where it seems certain that they must have a better personal knowledge of the facts than any one else, and where facts are disputed, the correct determination of which is essential to the formation of a satisfactory judgment. To summon a Zemindar in many of the disputes which arise between himself and his ryots would generally be a vexatious proceeding, because men of this class usually conduct their affairs through the agency of others, and would, therefore, be unable to give direct testimony; but in cases where the question is whether the defendant personally executed a certain deed, or made the contract which the suit seeks to enforce, the interests of justice clearly require that the party himself should be brought into Court.

30. A wide discretion, however, is left to judicial officers in this matter, and the Court would impress strongly upon the Zillah Judges the importance of watching carefully the manner in which it is exercised by the lower Courts.

31. The provisions in the new Code regarding the service of summons should be carefully explained to the Nazir of the Court and his subordinates. They differ in many respects from the old law.

Service of summons.

32. The form of injunction under Section 92 will be as follows :—

Form of injunction under Sec. 92, C. P. C.

COURT OF THE PRINCIPAL SUDDER AMEEN* OF ZILLAH 24-PERGUNNAHS.

No. 220 of 1859.

Radha Mohun Bannerjee, ... *Plaintiff,*

versus

Khetter Mohun Sha, ... *Defendant.*

Suit for possession of 10 biggahs 2 cottahs of land with houses and trees in Mouzah Rampore, Pergunnah Myda.

* The designation of this officer was altered to "Subordinate Judge" by Act XVI. of 1868, which designation is maintained in the Bengal Civil Court's Act VI of 1871.

Khetter Mohun Sha, of Mouzah Rampore, Pergunnah Myda, take notice.

Whereas it has been shown to the satisfaction of the Court in this suit that the property in dispute is in danger of being alienated by you, or (that you are about to damage the property in dispute by *cutting down the trees*) or (*removing the houses.*) Now, therefore, you are hereby commanded to refrain from (*doing the act complained of*): herein fail not

Given under the seal and signature of the Court, this 21st day of August, 1859.

Seal of Court

Principal Sudder Ameen. *

33. The heading of the injunction under Section 93 will be the same as the foregoing; but the preamble will be as follows :—

Ditto under Section 93.

Whereas application has been made to this Court by Radha Mohun Bannerjee, plaintiff, in the suit above-mentioned for an order to restrain you from [*the injury or breach complained of.*] Now, therefore, you are hereby commanded, on penalty of imprisonment to refrain from repeating *or continuing* the act complained of, or [from committing any further breach of contract], *or* [injury] arising out of the contract now being litigated in the suit above-mentioned, *or* [with reference to the property or right] now under litigation in the above suit; you are also hereby commanded to keep true accounts for the Court's inspection of all sums, receipts, and disbursements in connection with the { Contract, Property, Business } aforesaid, and you are warned that this injunction will continue in force from the 20th day of Assin, 1267 [September, 1859] to the 1st of Maug, 1267 (January, 1859).

Given under the seal and signature of the Court, this 21st day of August, 1859.

Seal of Court.

Principal Sudder Ameen.

* Now Subordinate Judge.

34. These forms must, of course, be varied to suit particular cases; but the general character of the forms should in all cases be preserved, and care should be taken that whatever the defendant is enjoined to refrain from doing, should be expressed in clear and precise terms so as not to admit of any doubt.

No penalty for disobedience of injunction under Sec 92- Receiver may be appointed.

35. It will be observed that no specific penalty is attached to disobedience of an injunction under Section 92. In all cases, however, of actual or threatened disobedience to the order of the Court, it can, if it think it necessary for the preservation or better managment or custody of the property, appoint a Receiver, or give such other orders of a like character for the prevention of waste or alienation, as it may consider advisable.

Death, marriage, and bankruptcy of parties.

36. It will be observed that the Chapter on the death, marriage, and bankruptcy of parties (Section 99 and following Sections) introduces a very important change into the procedure of our Courts. Hitherto, when a plaintiff or defendant died during the pendency of a suit, the suit itself was placed in abeyance, and it was necessary for the Judge to issue notices calling on the legal representatives of the deceased to appear. Under the new Code there need not, in the majority of cases, be any interruption to the suit, and it is left to the parties themselves to move the Court to substitute the name of the heir or representative for that of the deceased. There is no doubt that these provisions will prevent much of the delay, which has hitherto occurred in the disposal of Civil suits.

Proof of service of process

37. Under Sections 111 and 112, it will be seen that cases cannot be decided *ex parte* until the Court is satisfied either by the evidence of the parties serving the process, or other proof, that

the summons has been duly served on the defendant according to some one of the modes of service specified in the Chapter on service of summons.

Ex parte decision.

38. It will be understood that, even although the defendant does not appear, the plaintiff must prove his case to the satisfaction of the Court before he can obtain a decree. The defendant also, it will be observed, may apply for an order to set aside the *ex parte* judgment at any period between the date of the judgment and the 30th day after process has been taken out for its enforcement.

One party in the suit appearing for others.

39. The provision in Section 115, which admits of one plaintiff or one defendant appearing and acting for other plaintiffs and defendants on filing a written authority in Court, is a new one, and should be noted.

Written statements.

40. The only case, in which a defendant is compelled to put in a written statement without the order of the Court, is where he desires to set off a claim of his own against the debt claimed by the plaintiff. In other cases, it is discretionary with him to file a written reply or not, as he thinks proper.

41. The Court has the power of calling for written statements in all cases, where it may consider it necessary to do so.

42. But this power should only be exercised, as a general rule, where the case is complicated, or defendant is not present in person.

43. It should be carefully borne in mind that all written statements must be subscribed and verified by the parties themselves, or the competent persons referred to in paragraph 9, and that any wilful falsehood contained in these statements subjects the subscriber to a prosecution for perjury.

Examination of parties.

44. With regard to the examination of the parties at the first hearing of the suit, it is only necessary to point out that (except in cases which are to be finally disposed of at the first hearing), the examination should be limited to obtaining from each party a clear statement of the facts on which he relies, and ascertaining from him the exact points on which he and his adversary are at issue. If either of the parties has put in a written statement, it will only be necessary to question him regarding any allegations in that statement which appear obscure, or any facts alleged by his adversary which he has not fully noticed. Where the parties are represented by pleaders, or agents who have not put in a written statement, it will probably be most convenient to allow them to make a concise statement of the facts of their clients' case in the first place, questioning them afterwards on those points of difference between their adversaries and themselves on which they do not appear to have been sufficiently explicit.

Cross-examination by pleaders.

45. Cross-examination by the pleaders on either side ought not to be permitted at this stage of the proceedings. The examination is to be wholly by the Court.

Parties when to be summoned to answer questions.

46. The power vested in the Courts by Section 127 of summoning the parties to answer particular questions, is only to be exercised where the question is material to one of the issues in the case, where the pleader has been unable, or has refused to answer it, and where the Court has reason to believe that the party himself, if present, could answer it of his own knowledge. The Court, therefore, in all cases where they summon parties under this Section, will be careful to record the question or questions, the pleader's inability to answer which has induced them to summon the parties and the grounds of their expectation that the party summoned will be able to answer them.

47. When the issues are framed, the Court may either dispose of the case at once after hearing argument and evidence, or may fix a day for the production of evidence and for argument on the issues. In the latter case the issues and the notice to attend will be recorded in the following form :—

Issues and notice to attend.

Regular suit No. 18, Ram Chunder, plaintiff, *versus* Sham Chunder, defendant.
In this case, the issues are—

In bar of suit arising on the plaint [or plaintiff's statement.]

1 _____
2 _____
3 _____
4 _____

Of Fact.

1 _____
2 _____
3 _____
4 _____

Of law arising out of fact found.

1 _____
2 _____
3 _____
4 _____

The above issues were settled by the Court at the hearing of this case, on the ——of——when the following persons were orally examined——

_____.

The case stands adjourned for the final hearing under Section 172 till the ——of——, when both parties are required to have their witnesses in attendance at this Court at 11 A.M.

48. The Courts will take notice of the provisions of the Code (Sections 155 and 159) which allow service of a summons to a witness to be made on any adult male member of his family residing with him. It is not meant by this provision that service on a personal enemy of the witness would be sufficient service on the witness, merely because they occupied the same homestead. To render the service—a good service, the

Service of summons to witness.

parties must be *bonâ fide* living together in commensality, or at least in the same house. Care will be necessary to prevent this Section being taken advantage of for purposes of fraud.

Procedure against recusant witnesses.

49. Under Section 159 it will be observed that, in future, witnesses who keep out of the way so that they cannot be served, are not to be proceeded against without proof that their evidence is material, and their property is not to be attached, except at the instance of the party summoning them.

Evidence how to be taken.

50. The lower Courts should pay particular attention to the rule in Section 172, which requires that all evidence shall be taken under the personal superintendence of the Judge, and that if he does not write it down himself, he shall make a memorandum of the substance, which he shall sign and file with the record, recording the reason of his inability whenever he is unable to do so. The Zillah Judges will take notice of all violations of this rule which come under their notice.

Local investigations or investigations of accounts.

51. The authority conveyed in Sections 180 and 181 to appoint suitable persons to make local investigations or to investigate accounts, and to charge their expenses to the party at whose instance and for whose benefit they are appointed, is a most valuable one, and it will be the fault of the Courts henceforward, if they employ any other than well qualified and trustworthy persons to perform these duties.

Difference in dealing with reports in the two cases.

52. It will be seen that there is a material difference in the mode in which the Court may deal with the reports of Commissioners appointed for local investigations under Section 180, and of those appointed to investigate accounts under Section 181. The report in the former case must be received as

evidence, although the Commissioner may be examined touching his proceedings, and the Court may, of course, attach its own weight to the evidence; but in the latter case the Court may instruct the Commissioner to submit his proceedings with or without a report, or, if dissatisfied with his proceedings, may direct further inquiry.

53. The decree (Section 189) is, it will be seen, altogether distinct from the judgment, although it also must be signed by the Judge. The form will be as follows:—

Decree distinct from judgment.

COURT OF THE PRINCIPAL SUDDER AMEEN* OF 24-PERGUNNAHS.

Dated 20th August, 1849.

No. 220 of 1859.

Radha Mohun Bannerjee, son of Rajkissen Bannerjee, inhabitant of Mouzah Andool, Pergunnah Myda, ... *Plaintiff,*

versus

Rajkissen Bhuttacharjee, son of Denonath Bhuttacharjee, inhabitant of Rampore, Pergunnah Myda, ... *Defendant.*

Suit for (extract particulars of claim given in the Register of the suit.) This cause coming on to be heard and debated this present day before Baboo ——— Rai Bahadoor, Principal Sudder Ameen* of Zillah 24-Pergunnahs, in the presence of Baboo Gour Dass Bysack, Counsel for the plaintiff, and Moonshee Abbas Ali, Counsel for the defendant, (or if the parties appear in person, mention their names), and the evidence, oral and documentary, produced by the plaintiff and the defendant respectively having been heard, and due consideration having been given to what was alleged by the Counsel (or by the parties) on both sides, the Court orders and decrees that (here state the decretal order in terms of the judgment, where costs are awarded, give a detail of the costs, which either party is to pay, and insert the other particulars required by the 190th and following Sections of the Code).

Seal of Court.

*Principal Sudder Ameen.**

The terms of the decretal order should be carefully studied before the decree is signed, and the directions should be precise, so that there may be no ambiguity.

* Now Subordinate Judge.

54. The following shall be the form of the notice which the Court is to issue under Section 216.

Court of the————————————————————

No——of————————————————————

————————————————————, Decree-holder.

————————————————————, Judgment-debtor.

To————————inhabitant of———————— take notice that an application has this day been made by————————inhabitant of———————— for enforcement of the decree passed against you on the————————in the suit noted in the margin, and that you are required to appear on or before the————————, and show cause why execution of the said decree should not issue against you, failing which, an order for execution will forthwith issue in terms of the application.

Given under my hand and the seal of this Court.

Seal of Court.

*Principal Sudder Ameen.**

55. Resistance of process in cases of attachment or seizure of moveable property is still punishable under Section 25 Regulation IV. of 1793, which has not been repealed. No provision has been made in the Code for the punishment of resistance in these cases.

Resistance of process.

56. The prohibitory orders in Section 234, 235, and 236 may have the same heading as the notice in paragraph 54. The body of the order, however, will run thus:—

Form of prohibitory orders.

Whereas the decree-holder in the case above-mentioned has applied for attachment of the following property, *viz.*,————————, and it appears that the aforesaid property is at present in your possession, take notice, therefore that you are hereby prohibited from (here give the prohibition in terms as nearly as possible of the Sections referred to, describing with precision the property referred to.)

* Now Subordinate Judge.

2803

Given under my hand and the seal of this Court.

*Principal Sudder Ameen.**

A slight variation will adapt these forms to the notices of attachment authorized in Section 237.

Postponement of execution sale.

57. The attention of the Courts is called to the provisions of Sections 243 and 244, which confers on them the power of postponing at the instance of the judgment-debtor, a sale in execution of decree, if they are satisfied that the amount may be raised by mortgage or lease. Care must be taken that this power is not so exercised as to inflict an injury on the decree-holder.

Sales of land paying revenue.

58. Sales of land paying revenue to Government are only to be made through the Collector under Section 248 in the event of the Government so directing. Where no special authority has been given by the Government to the Collector, they will be held, as heretofore, by an officer of the Civil Court.

Plea of *benamee* purchase.

59. Section 260 prohibits suits for the recovery of lands sold in execution of decree when founded on the plea that they were purchased *benamee*.

Distribution of sale proceeds.

60. Sections 270 and 271 introduce an important alteration in the principle on which sale proceeds have hitherto been distributed.

Arbitration and agreement.

61. The Chapters on reference to arbitration and proceedings on agreement of parties also contain much new matter which should be noted.

* Now Subordinate Judge.

62. Section 333 directs that the period allowed for appeal shall be reckoned exclusive of the time requisite for obtaining a copy of the decree appealed against. In granting copies of decrees, therefore, the lower Courts will be careful to endorse on them the date of application for copies and the date when such copies were ready for delivery to the appellant.* When the requisite stamps are not filed with the petition, the date of application must be considered to be that on which the stamps were filed, and the Mohúrrirs were enabled to commence the preparation of the copies. The endorsement, therefore, must always state on what date the stamp papers were deposited. The Appellate Court should be careful to notice any delay in furnishing these copies.

Period for appeal.*
Date of application for copies how to be reckoned.

63. Where appeals are preferred from decisions passed before the 1st of July, and appellants would be deprived of any right in reference to the procedure of the suit by the operation of Act VIII. of 1859, the appeal must be heard under the old law. A similar rule applies to the original trial of all suits pending when this Act came into operation.

Appeals from decisions prior to July, 1859 and original suits pending on that date.

64. In the preceding remarks the Court have not thought it necessary to do more than to call attention to the principal features of the new Code and to the most important of the many changes which it introduces in the old system of procedure. The Code itself must be thoroughly studied section by section. Its success in the different Courts depends in a peculiar degree on the judgment and discretion with which it is worked by individual Judges, and

Success of the new Code on what dependant.

* Attention is drawn to this para. by High Court's C. O. No. 31, dated 3rd October, 1864.

neither the one nor the other can be exercised to any purpose without a perfect familiarity with its provisions.

Communications invited.

65. The Court request that the Zillah Judges will exert themselves to preserve uniformity in the working of the Code in their respective districts, and that they will communicate freely with them whenever they experience any difficulties.

Circular Order No. 156.
Dated 14*th April*, 1860.
SECTION 327.
Private awards.

Applications to give effect to them, where to be made, and how to be exhibited.

66. The Court having had referred to them the questions inserted in the margin connected with the enforcement of private awards under Section 327 Act VIII. of 1859, direct the circulation, with a view to uniformity of procedure in the Courts under their control, of the following answers for general information :—

• 1. "Is the application to be made as a miscellaneous matter in the Judge's Court, or is it to be regarded as the institution of a regular suit, and preferred, therefore, in the Court of lowest jurisdiction competent to try the case, *i.e.*, in the Courts of the Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, according as the amount may or may not exceed Rs. 300 and Rs. 1,000 ?

2. "Is the application to be made on stampt paper prescribed for petitions of plaint, or on that for miscellaneous petitions and applications ?"

67. In regard to the first question, the Court have held that the *application to give effect* to a private *award* should be made to the Court having jurisdiction as to value, and so far as the question involved is to be tried, *viz.*, whether the award shall stand or not, it will be brought on the file as a *regular suit*, and be inserted in the quarterly statement No. 1 * intended for the entry of regular cases.

Applications for execution of them, where to be made, and how to be shown.

68. After the award is upheld on trial, *application for its execution* should be made to the Court upholding the award on its *miscellaneous side*, and be inserted in the statement No. 2 or

* Now Quarterly Statement A., vide High Court's C. O. No. 31, dated 4th November, 1870.

No. 3* for the entry of miscellaneous cases, according as the deciding Court may be that of the Judge and Principal Sudder Ameen, or that of the Sudder Ameen and Moonsiff.

69. In regard to the *second* question, the Court have held that the applications should be made on the stamp now required for miscellaneous petitions.

Stamp for applications.

70. In regard to the expenses of witnesses, whose attendance is required on behalf of pauper plaintiffs, states that as Section 308 of the Code only exempts paupers from the payment of the stamp duty, a suit instituted by a pauper must proceed in all other respects as any other case. The expenses of witnesses must, therefore, be borne by the pauper.

Circular Order No. 200.
Dated 24th March, 1862.
Expenses of witnesses in pauper suits.

ACT XXIII. OF 1861.

Section 3 Act XXIII. of 1861 does not, and was not intended to, interfere with the provisions of Section 5 Act. VIII. of 1859, defining the cases in which the Civil Courts have jurisdiction. Act XXIII. of 1861 repeals Section 33 Act VIII. of 1859, but re-enacts its recast in Section 3 adding Section 4 to it. The word "and" between the words "arise" and "that" in Section 3 of Act XXIII. of 1861 must be read in a disjunctive, and not a conjunctive, sense; in other words, Section 5 of Act VIII. of 1859 enacts that a Court of justice has jurisdiction in personal action, if either the cause of action have arisen, or the defendant at the time of the commencement of the suit dwell, or personally work for gain within the limit, to which the jurisdiction of the Court extends, and Section 3 of Act XXIII. of 1861 enacts that, if neither one nor the other of these three facts are found to exist, a plaint involving a personal

Circular Order No 203.
Dated 7th April, 1862.
Section 3 Act XXIII. of 1861.
Jurisdiction in personal actions.

* Now Quarterly statement C. Vide High Court's C. O. No. 31, dated 4th November, 1870.

action should be returned to the plaintiff in order to its being presented in the proper Court.

AFFIRMATIONS.

Circular Order No. 74.
Dated 3rd April, 1840.
Form of affirmation in Bengalee and Oordoo.

With reference to the provisions of Act V. of 1840, transmits to civil and criminal authorities the subjoined translations in Bengalee and Oordoo of the affirmation enjoined to be taken by all Hindoo and Mahomedan deponents, and requests that they will make use of them until further instructions.

2. In the event of its being necessary to use the Bengalee form for Mahomedans, the term used to designate the Supreme Being by persons of that persuasion will, of course, be substituted for that which now appears in the translation.

3. It is not required that the deponent should sign his name to any written affirmation, but he should merely read it out in Court, or the declaration should be read out to him and repeated by him before giving his deposition, and at the heading of his written deposition, it should be stated that he was sworn according to the provisions of Act V. of 1840.

میں ایمان سے خدائے تعالی کے حضور میں اقرار کرتا ہون
کہ اس مقدمہ میں میں سچ کہونگا بالکل جو جانتا ہون
سچ کہونگا اور سوائے سچ کے کچھہ نہیں *

میں دھرم سے پرمیسر کے حضور میں اقرار کرتا ہون کہ اس
مقدمہ میں میں سچ کہونگا بالکل جو جانتا ہون سچ کہونگا
اور سوائے سچ کے کچھہ نہیں *

আমি পরমেশ্বরকে প্রত্যক্ষ জানিয়া ধর্ম্মতঃ প্রতিজ্ঞা করিতেছি যে এক্ষণে যাহা কহিব তাহা সত্য ও সম্পূর্ণ সত্য হইবেক এবং সত্য ভিন্ন হইবেক না ইতি।

AMEENS (CIVIL COURT.)

Circular Order No. 105.
Dated 6th November, 1857.
Number, classification, and distribution of Ameens.

With the sanction of the Governor-General of India in Council, the Lieutentant-Governor has been pleased to determine that the Civil Court Ameens to be appointed under Act XII. of 1856 shall be 99 in number, of whom 33, constituting a *first* class, are to draw a monthly salary of Rupees 70 and 66, constituting a *second* class, Rupees 55; and that the number assigned to each district shall be as follows:

* *Distribution List of Civil Court Ameens.*

	1st Grade.	2nd Grade.	Total.
Backergunge,	1	2	3
Beerbhoom,	1	2	3
Behar,	1	1	2
Bhaugulpore,	1	2	3
Burdwan (East),	3	7	10
Burdwan (West),	1	4	5
Cuttack,	1	2	3
Chittagong,	2	2	4
Dacca,	2	3	5
Dinagepore,	1	2	3
Hooghly,	2	6	8
Jessore,	1	2	3
Midnapore,	1	2	3
Moorshedabad,	1	2	3
Mymensingh,	1	2	3
Nuddea,	2	3	5
Patna,	1	1	2
Purneah,	1	2	3
Rajshahye,	1	2	3
Rungpore,	1	2	3
Sarun,	1	2	3
Shahabad,	1	1	2
Sylhet,	1	2	3
Tipperah,	1	1	2
Tirhoot,	1	2	3
24-Pergunnahs,	2	4	6
Hazareebaugh or S. W. Frontier Agency,†	0	3	3
	33	66	99

* *N.B.*—The number to be kept up in each district should be only in proportion to the work there is to be done. (Vide C. O. No. 114, dated 12th March, 1858). The District Judge for sufficient cause may propose an increase in the number (Vide C. O. No. 28, dated 8th September 1870, para. 2.)

† The above C. O. No. 105, dated 6th November, 1857 has been subsequently declared applicable to Assam.

2. In selecting proper persons for these appointments, Judges will be careful, in all cases, to require a competent knowledge of surveying, including exactness and facility in draughting what has been surveyed; and for the first class, they should give preference to persons who, by examination, have been declared qualified to appear as Pleaders in the Superior Courts; and for the second class, to those passed for Pleaders in the Courts of Sudder Ameens or Moonsiffs.

Their qualifications.

3. The Judge is requested to take such steps for the appointment of these Ameens, and for adopting other arrangements that may be subsidiary thereto, as shall enable him, throughout the Courts of his district, to give effect to the new Act from the 1st January, 1858. He will not fail to require any Ameen appointed to subscribe the declaration prescribed in Section 4 of the Act.

Act when to have effect.

4. The duties which may be assigned to Ameens are set forth in Section 5. Considering the limited number of Ameens now proposed to be employed, compared with those entertained under the old law, the District Judge's careful attention should be given both to the nature of the work assigned to the Ameens and to the time which they take in performing it. Obviously, the local investigations described in Clause 2 Section 5 Act XII. of 1856, and more rarely the investigations mentioned in Clause 1, are the most delicate and important of the new Ameens' duties; and by these Ameens only can such duties be performed.

Duties of Ameens.

The business mentioned in Clause 3, namely, delivering over possession of land, houses, and other immovable property in execution of decrees, in the great majority of cases, is of a simple and technical character, easily to be performed through the Nazirs of the Courts, and accordingly it appears to the Sudder

Court desirable that in order to avoid the withdrawal of the Court Ameens from more necessary duties, most frequently the Nazirs of Courts should be ordered to deliver over property in execution of decrees. Again, the time of the Ameens may be very considerably economized by effecting through Nazirs the sale of movable property and of immovable property saleable under Section 3 Regulation VII. of 1825,* and again a similar remark applies to the first description of business mentioned in Clause 5, namely, ascertaining the sufficiency of sureties.

5. Upon the whole, therefore, to enable the District Judge most effectually to carry out the new Act by the Ameens assigned to his district, he is requested to instruct the Lower Courts, especially the Moonsiffs, as far as practicable, to execute directly through the Nazirs of their establishments the business described in Clauses 3 and 4 Section 5 of Act XII. of 1856.

Not to attach property.

6. The District Judge will observe that in the new Act no provision is made for employing Ameens in effecting attachments of movable or immovable property. The processes in such cases must, therefore, be served by the Nazirs of the Courts.

7. It is understood that hitherto the completion of Ameen's reports has been much retarded from the imperfect and loose orders recorded for their guidance. In future, before issuing orders for the employment of an Ameen,† the several Courts will be careful to consider the exact nature of the work to be done the means to which the Ameen is to have recourse for doing it, and the time it should occupy; and they will instruct him accordingly. Sometimes it may be possible for the Court to indicate to the parties concerned the date from which the Ameen's

* This Regulation has been repealed by Act X. of 1861, immovable property being now saleable in execution under Act VIII. of 1859, Sections 223, 224, and 226 to 231.

† On this subject see High Court's C. O. No. 25, dated 25th August, 1870.

proceedings are to commence; in other cases, the Ameen may have to notify this date; but under any circumstances, it should be distinctly understood that the Ameen is not to defer his proceedings owing to the absence of a party to whom notice has been given.

Two or three not to be deputed to investigate the same matter.

8. All the Courts must distinctly understand that the Sudder Court cannot countenance the pernicious practice, not unseldom followed, of deputing two or three Ameens in succession to investigate the same matter. This very objectionable course almost invariably arises from the original instructions being loosely given and the first Ameen's execution of them being inadequately superintended.

Effect of attestation by signature.

9. Litigants habitually attempt to impeach the genuineness of an Ameen's returns and plans by withholding the attestation of their own signature. An erroneous impression prevails that they ratify and accept what they sign. But it should be understood that unless otherwise expressed, in merely signing a plan, for example, as witness to its execution, they are not necessarily precluded from subsequently stating any objection they may entertain to the mode in which it has been prepared.

Where employment of Ameens may be avoided.

10. It is believed that the employment of Ameens by Moonsiffs may be avoided in many cases in which they are now inconsiderately employed. Moonsiffs' Courts are comparatively near the subject of dispute, and witnesses, whom it may be necessary to examine, should be summoned and examined by Moonsiffs themselves.

Ameen's Diary and Register.

11. The District Judge will furnish to the Ameen two blank books which must be kept up according to the following Forms:—

No. 1.—DIARY.

Month.	Day.	Short Memorandum of business done daily, to be recorded daily.

No. 2.—REGISTER.

1	2	3	4	5	6	7	8	9	10
No.	Date of receipt of order.	Date of order.	Court issuing it.	Nature of business.	Names of party or parties.	Date of commencement of duty.	Time fixed for performing duty.	Date of report of completion.	REMARKS.

Weekly Report of work.

12. The Ameens will submit to the District Judge weekly a short report of business done and in hand. It may often be the Judge's duty to examine his diary and register, and to call for full details of an Ameen's proceedings; but this weekly report is intended to keep the Judge informed of the progress of his operations and of the propriety of sending him new work.* No doubt, it will frequently be possible for an Ameen to carry on more than one assigned duty, and it will be necessary for the District Judge, the Principal Sudder Ameen, and others of the District Judge's subordinates to consider how far it is proper to require his attention to be simultaneously given to more than one case.

Names of Ameens to be reported and the localities assigned to each.

13. The District Judge will report, for the information of the Sudder Court, the names of the Ameens whom he may appoint; and the localities which he may assign to each as constituting the ordinary limits of their operations.

* And that no improper delay occurs in executing commissions entrusted to them. Vide High Court's C. O. No. 25, dated 25th August, 1870.

14. His very careful attention is requested to the provisions of Section 8 of the Act. The *daily rate* chargeable for the employment of an Ameen is fixed at three rupees. In estimating the time which any duty about to be assigned to an Ameen, may be expected to occupy, every Court will, as near as may be, determine the time within which the business once undertaken should be completed.

Daily rate chargeable.

15. The whole expense in each case to be levied must be prepaid at the rate of three rupees a day. From the accumulations of this fund, * the fixed salaries of the Ameens have to be paid : and it has been distinctly intimated by the Government that no portion of the charge to be incurred by the appointment of Ameens can be defrayed by the State.

Pre-payment required.

16. On any given duty being by an Ameen closed, the Ameen will specially report the time it occupied, and each Court will at once consider and record the amount which on account of the Ameen's employment, is chargeable to costs of suit. If in any case the estimated pre-payment be found to exceed the actual charge, the excess should be refunded.

Completion report.

17. Much care will also be necessary to confine within exact limits the fees leviable by Section 9 in *sale cases*. The pre-payment made in these cases, the District Judge will observe, is intended to provide for the Ameen's remuneration, when from any cause a sale may not take effect. In this case, also, on the termination of the proceedings, the cost incurred by the Ameen's deputation should be considered ; if the whole sum

Fees in sale cases.

* The Civil Court Ameen's fund no longer exists, all Ameens' fees being now credited to Imperial Revenue. The High Court's control is now to be exercised over expenditure connected with the employment of Ameens. Vide High Court's Circular Order No. 12, dated 8th April, 1872.

chargeable on behalf of the Ameen, at three rupees a day *do not exceed* the deduction made from the proceeds of sale at the rate of one anna in the rupee (6¼ per cent.), the latter sum will be wholly credited to the Fee Fund, and the estimated sum paid in anticipation of the sale will be refunded; if the sum chargeable for the time of the Ameen's employment *exceed* the percentage receivable from the sale, then only so much can be refunded as, taking the two items together, will leave the exact cost of the Ameen's deputation to be covered. If no sale at all occur, the cost of the Ameen's deputation must be wholly covered by the pre-payment.

Mode of exhibiting receipts and disbursements.

18. Separate instructions will be communicated to the District Judges by the Accountant to the Government of Bengal, as to the mode in which their receipts and disbursements on account of Civil Court Ameen's salaries should be exhibited.

Circular Order No. 113. *Dated 12th March*, 1858. Security.

19.—No security is to be required from the Ameens.

Seals.

20.—No seals are required for their offices.

Stationery.

21.—The Ameens may be supplied with stationery from the office.

Boats.

22.—Where boats are necessary for the use of the Ameens when employed in the interior, their hire is to be treated as an extra charge, to be defrayed by the parties concerned.*

Peons.

23. When peons are wanted to accompany the Ameens, their remuneration likewise is to be an extra charge upon the parties.

* The principle of this Rule has been extended by the High Court to all cases in which a local investigation is necessary of the nature described in Cl. 3 Sec. 5 Act XII. 1856, and the parties requiring the services of an Ameen are to be charged with his travelling expenses either by land or water. See C. O. No. 30 dated 10th October, 1860, and No. 4, dated 20th January, 1864.

24. When a Nazir is personally employed in the interior for any of the purposes mentioned in Act XII. 1856, his necessary expenses are to be paid for on the principle of Section 9 ;* his personal deputation is not to be resorted to, but under necessity ; and otherwise he should transact the duties appointed him by means of peons, whose pay will be an extra charge upon the parties concerned, the Nazir receiving the usual "*meeran.*"†

Employment of Nazir in the interior.

25. With regard to the purchase of instruments, the Court would advise District Judges applying to the Government direct, whenever they deem it desirable that such expenses should be incurred, as it seems to the Court unreasonable to expect Ameens to supply themselves with their instruments.

Instruments.

26. The eligibility of Ameens appointed under Act XII. of 1856 to pensions is declared by Extract para. 68 of Despatch from the Hon'ble the Secretary of State for India, No. 2 of 1858, dated the 6th January.

Circular Order No. 134.
Dated 9th April, 1859.
Pensions to Ameens

"As it appears that Civil Court Ameens appointed under Act XII. of 1856 are remunerated by fixed monthly salaries, and that all fees connected with their employment are credited to Government, I see no reason for withholding from them the same benefit as regards pensions, as is accorded to other Members of the Uncovenanted Civil Service."

27. Much inconvenience having been experienced by intending Distrainers under Act X. of 1859, from the circumstances that the usual place of abode of the Civil Circuit Ameens in the different districts were either unknown to the persons requiring their services, or situated at so

Circular Order No. 167.
Dated 6th August, 1860.
Residences of Ameens.

* Any surplus remaining after payment of those expenses will be repaid to the litigants, and an account with this object should always be required from the Nazir. See C. O. No. 184, dated 4th July, 1860. See. C. O. No. 26, dated 5th September, 1871.

† *Meeran* fees are now credited to Government, the salaries of Nazirs being on a more liberal scale. See High Court's C. O. No. 1407A, dated 17th December, 1862, para. 5.

great a distance from the place where the distrained property was, that these officers could not be found within the time which by the law is allowed to intervene between the date of distraint and that of application to the Ameen to sell, immediate effect was ordered to be given to a proposition of the Board of Revenue to insist on the Ameens taking up fixed places of residence in a central situation, and to make the same known generally throughout their jurisdiction.

28. The Court having had reason to believe that some officers have been in the regular habit of employing persons other* than the recognized Court Ameens in conducting investigations regarding matters involved in Civil suits before them, requested District Judges to impress on all judicial officers, subordinate to them, that such persons should not be employed without the sanction of the said Judges.

Circular Order No. 202. Dated 26th March, 1862.
Employment of persons other than Ameens.

ANNUAL REPORTS.

Considerable delay having occurred in past years in the receipt of some of the annual Zillah statements and reports on the administration of civil and criminal justice, the attention of Civil and Sessions Judges is now specially called to the subject, with a view to prevent similar delay at the close of the current year.

Circular Order No. 107. Dated 25th November, 1850.
Time for submitting annual reports on administration of civil and criminal justice.

2. The Court are aware that the delay generally arises from the fact, that the statements are often not received from the subordinate authorities, so as to admit of their being submitted within the time prescribed, or that they arrive in an imperfect state, and it is found necessary to return them for correction.

3. Judges are requested, therefore, to call the attention of their subordinates to the subject, and to direct them to

* See also High Court's C. O. No. 28, dated 8th September, 1870

commence the preparation and revision of their statements in December, so as to have them as far advanced as possible before the end of the year. The addition of the December returns to them will then be a work of comparatively little trouble, and their reports may be completed and sent in by the 15th of January, so as to enable Civil and Sessions Judges to submit their own by the 1st of February.

4. They will also impress on their subordinates the necessity of careful revision of the statements in order to ensure their correctness, and to avoid the necessity of their being returned, and will point out to them that the Court consider the punctual despatch of correct statements an important duty, the neglect of which will not be overlooked by the Court in the comparative estimate of their qualities as public officers.

5. Judges will consider these directions equally applicable to their own office, and will hold in mind that the utility of periodical reports is seriously impaired, and often entirely destroyed by delay in the receipt of them.

APPEALS.

Circular Order No. 130. *Dated 6th February*, 1835, (*L.P. and W. P.*)
Revising appeals with a view to maintain a check over proceedings of lower Courts.

The *Zillah* and City Judges are expected as far as may be practicable and consistent with their other duties, to revise all appeals from the decisions of *Moonsiffs*, or to retain a certain portion of the decisions passed by each officer on their own files, with a view to maintain a proper check over their proceedings. Whenever, however, the accumulation of the petitions of appeal from the decisions of *Moonsiffs* or the general arrears of business depending in any Zillah and City Court may render it impracticable for the Judge of that Court to revise these appeals with sufficient promptitude and despatch, the Judge will from time to time obtain the sanction of the Court of Sudder

* The same date was also fixed by a later C. O. No. 12, dated 25th April, 1853, (in other respects superseded), and has never been altered.

Dewany Adawlut agreeably to Clause 2 Section 16 Regulation V. 1831* to refer as may appear necessary and proper, a specified number of these cases to the Principal Sudder Ameen attached to his Court for trial.

Circular Order No. 178.
Dated 29*th July*, 1836 (*L. P. and W. P.*)

Original documents filed as exhibits.

2. Several instances having lately occurred of objections being taken in this Court to original documents filed as exhibits in the lower Courts, on the ground of their having been altered since the date of their execution, which, at the time they were filed, as well as on the decision of the suit by those Courts, passed without question, and without any doubts being expressed as to their authenticity, and the Court seeing reason to believe that such documents have not unfrequently been altered by interested persons, in order to throw suspicion upon them, and to suit their own views either after the decision of the case by the lower Court, or subsequently to the receipt of the record in this Court, it is requested that, with a view to check as far as may be practicable this very serious evil, the District Judge will cause the Record-keeper of his Court, or any other respectable and trustworthy officer on his establishment, to certify in the presence of the *vakeels* of the parties, or of the parties themselves, the actual state, at the time of filing, of all original documents exhibited as proofs in his Court, desiring him carefully to note any interpolations, erasures, or other alterations at that date apparent on the face of them; and that the District Judge will observe a similar precaution at the time of despatching the record of causes appealed to the Court, forwarding the original documents filed by the respective parties in such cases, together with the

Certificate of their condition when filed.

Original papers to be sent up in separate parcels, sealed and listed.

* The procedure under this head is now governed by Section 26 of the Bengal Civil Courts Act (VI. of 1871); Regulation V. of 1831 having been completely repealed by Act XVI. of 1868.

"Exhibits, &c., filed by the plaintiff or appellant in the case of
versus
"Exhibits, &c., filed by the defendant or respondent in the case of
versus

original depositions of the witnesses for the prosecution and defence in two parcels, in a separate cover under seal, each parcel being endorsed as in the margin,* and accompanied by a list of the contents and the certificates above required.

3. By the introduction of the same rules into the Courts subordinate to the District Judge, to whom he is requested to issue the necessary instructions, the Court would hope that the evils above complained of may be in a great degree remedied if not entirely removed.

4. The Court having observed a very general and increasing disregard of the rule contained in the Circular Order No. 178, dated the 29th July, 1836, which requires that, in despatching the record of causes appealed to the Court, the original depositions of witnesses and the exhibits filed by the parties respectively, be forwarded in a separate cover under seal, each packet being properly endorsed and accompanied by a list of its contents and by a certificate of the actual state of the exhibits at the time of filing, deem it necessary to call the particular attention of the Judges to the Circular instructions referred to, and to intimate that any deviation which may in future be observed from this important rule, which by the Circular is also made applicable to the Subordinate Courts, will be visited with serious notice by the Court.

Circular Order No. 168.
Dated 8th October, 1841, (*L. P. and W. P.*)
Attention called to foregoing rule.

ATTORNEY (POWERS OF)

Requests that all Civil and Criminal authorities, in attesting powers of attorney in future, will invariably sign their names in full.

Circular Order No. 138.
Dated 7th July, 1857, *L. P., and 5th August*, 1851, *W. P.*
Names to be signed in full.

BOOKS.

The Uncovenanted Judges are expected to preserve carefully the books supplied to them, and, in taking or giving over charge of office, to forward to the Judge a certificate of the condition in which the books may be at the time. In the event of the books being damaged, the officer delivering over charge is to be held responsible, and called upon to replace them.

Circular Order No. 118.
Dated 5th December, 1844.
Books to be preserved carefully.
Certificate of their condition.
Responsibility for damage.

2. The Governmcnt having ruled that the publications sent to the Uncovenanted Judges belong to the office and not to the officer, Reports, *Gazettes*, and other books supplied to the officers in the district, are not to be taken away by the incumbents on their promotion or transfer, but are to be transferred to the successor in office.*

Circular Order No. 676.
Dated 6th July, 1855.
Reports, *Gazettes*, &c., not to be taken away.

3. With a view to ensure the better preservation of the books belonging to each of the public offices under their control, the Court are pleased to issue the following which have been introduced by the Western Court.

Circular Order No. 71.
Dated 26th July, 1855.
Rules for preservation of books.

I. The Head Clerk of the English office is to be appointed Librarian. He will be primarily responsible for the custody and preservation of the books composing the office library; but this will not relieve the Judge or Magistrate, or other presiding authority, from the general responsibility devolving on him as head of the office.

Head Clerk to be Librarian.

* This rule was modified for a time by Government Circular No. 5019, dated 14th September, 1868, and Moonsiffs were permitted to take their law books with them, when transferred to other Districts; but Government, with the concurrence of the Court, has again resolved that such books should be "made part of the Court Library in each case." Vide Government Letter No. 0509, dated 19th December, 1871.

II. Correct catalogues should be immediately made of the books in the library. It might be useful to insert a column in the catalogue, showing the date of receipt of each book. The catalogues to be of English paper and strongly bound for permanent record.

Catalogues to be made.

III. Each book should have a number labelled upon it, corresponding to a number in the catalogue, and as fresh additions are made to the library, they should be labelled and numbered in like manner. Each book should also be marked on several leaves with the office stamp.

Books to be labelled with numbers, and marked with office stamp.

IV. Whenever a book is required out of the library by any officer, or other than the Judge or Magistrate competent to require the same, the Librarian should send a receipt on a slip of paper, which the recipient will sign and return on getting the book; such receipts to be destroyed on the book being returned to office.

Receipts to be taken when books are required.

4. The Court are pleased to direct that the principle of their Circular Order No. 20, [*published series No.* 71,] 26th of July last, respecting the custody and preservation of the libraries attached to the English offices of the Zillah Judges, be considered applicable, as far as possible, to the Courts of the Principal Sudder Ameens, Sudder Ameens,* and Moonsiffs under their jurisdiction.

Circular Order No. 79
Dated 25*th January*, 1856.
Principle of foregoing orders declared applicable to Subordinate Courts.

5. Catalogues should be formed by each Native Judge of the Regulations, Acts, *Gazettes*, &c., furnished by Government for the use of his office, and on receiving charge of any judicial

Catalogues to be formed and officer receiving charge to report defect or damage.

* Sudder Ameens ceased to exist when Act XVI. of 1868 came into force, and Principal Sudder Ameens are now Subordinate Judges. Vide Bengal Civil Court's Act 1871.

post, the relieving officer should satisfy himself that the library of the Court to which he is appointed, is complete and in good order, and the Catalogue correct. Should any books be found wanting, or their condition materially damaged, he should report the fact without delay to the Judge to whom he is subordinate, or else he will be held answerable for the deficiency.

CASES, (TRIAL OF)

Circular Order No. 91.
Dated 3*rd July*, 1840.
Causes to be tried according to order of filing.

Prohibits the practice of selecting undefended suits and other cases easy of decision, without reference to the number on the file, or the date of institution, and directs Uncovenanted Judges to bring on the causes depending in their respective Courts for trial, according to the order in which they may have been filed.

Circular Order No. 35.
Dated 30*th December*, 1853.
Cases to be taken up in numerical order, only when they are in an equal stage of preparation.

2. It has been brought to the notice of the Court that an erroneous idea is entertained by many Native Judicial Officers regarding the Court's instructions, that cases are to be taken up only according to their numerical order in the registry, so that they conceive themselves to be debarred from passing any order in the first case on their file when it has once been taken up, until its turn comes again after they have taken up, in numerical order, all the other cases below it on the file.

3. The Court request that the Judge will be careful to remove this misapprehension, if it exists in his district. Where several cases are in an equal stage of preparation, or equally ripe for decision, of course, the case which stands first in numerical order in the registry, should be taken up first; but this does not prohibit an officer from taking up any case at any time

with a view to pass any order connected with it necessary to its preparation for decision.

4. The Court, having observed that very few original suits are tried by Zillah Judges, call attention to the discretion vested in Judges by Section 2* Act IX. of 1844, and desire that the Judge will, from time to time, as the state of his general business will admit, withdraw a certain number of original suits from the files of the Principal Sudder Ameens of his district, and decide them in his own Court.

Circular Order No. 100.
Dated 14*th September*, 1850, *L. P. and W. P.*
Withdrawal of original suits by Zillah Judge.

5. The Sudder Dewany Adawlut for the North-Western Provinces, having found from a return which had been prepared in their office from the annual Civil statements of the past year, that in the great majority of the districts in those provinces, very few original suits had been decided in the course of the year by the Zillah Judges, have called their attention to Circular Order No. 100, dated the 14th September, 1850, and repeat their desire that the Zillah Judges will, when the state of their Civil business will admit of it, withdraw a certain number of original suits from the files of the Subordinate Courts, and decide them in their Courts. This Court deem it necessary, with reference to a similar return prepared by their direction, to call the attention of the Judges to the above Circular Order, and to direct that the Judges in the Lower Provinces shall always keep a certain number of original cases (or about 12) on their file for disposal, and as one or more are decided, shall call up fresh cases, always selecting four cases which have been instituted within two months previously.

Circular Order No. 97.
Dated 21*st May*, 1857.
Ditto ditto.

* This Section (2 IX. 1844) has been repealed by Act X. of 1861 ; but the competency of a District Court to withdraw any suit instituted in any Court subordinate to such District Court, and to try such suit itself, is declared in Section 6 Act VIII. of 1859.

6. The Court also direct that, in making such a selection, preference should generally be given to those suits in which the amount or value of the claim may exceed the sum of Rs. 5,000, and, in giving effect to these instructions, due regard should be paid to the rules contained in paragraph 4 * of the Court's Circular Order No. 54, dated the 18th October, 1839, in respect to suits in which English documents form part of the evidence, and their decision appears likely to involve such communicated questions as would make a knowledge of English indispensable to a correct adjudication of the matter in dispute.

Suits above Rs. 5,000 to have the preference.

Suits where English documents form part of the evidence.

CERTIFICATES OF ADMINISTRATION.

Circular Order No. 90.
Dated 4th December, 1856.
Forms of Certificates under Act XXVII. of 1860.

With reference to the requirements of Section 2 Act VIII. of 1854 and Act X. of 1851, the Court are pleased to prescribe the annexed Forms of Certificate, for use, in amendment of the Forms which, in conformity with Act XX. of 1841,† were prescribed under the Circular Order No. 187, dated 11th February, 1842.

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* Paragraph 4 (alluded to above) "upon inspecting the English and Oordoo documents, you will consider the propriety of allowing the subordinate Court to proceed with the suit or transferring it to your own file with due advertence to the nature of the English writing, and of the transaction to which it may relate, exercising your discretion accordingly. Should it appear likely to involve such complicated questions, as would make a knowledge of English indispensable to a correct adjudication of the case, you may deem it advisable to adopt the latter course, and recal the suit to the file of your Court, but if the English writing should be confined to a simple account bill or other similar document, you will probably think fit after satisfying yourself of the accuracy of the transaction [and in the event of discovering any error taking proper steps towards remedying the defect,] to return the papers to the lower Court, with instructions to proceed in the usual manner."

† This Act [XX. 1841] having been rescinded by Act XXVII. of 1860, the new Act and year were by a subsequent Circular [No 60, dated 6th August, 1860] ordered to be substituted in the forms furnished with the above Circular. This has been done in the text.

FORM OF CERTIFICATE.

To

A. B.

Whereas, in pursuance of the orders of this Court, dated
in the matter of the estate of the late
this certificate is granted to you, agreeably to the provisions of Act XXVII. of 1860. You are hereby authorized and empowered to collect all debts due to the estate of the said
giving acquittances for all sums received by you.

You are further empowered to receive interest on the Government Notes and dividends noted in the margin * and on the Bank shares marginally † noted or parts thereof, due to the said estate, and to negotiate such securities. You are also empowered to receive any share or shares of such interest or dividends that may be due to the said estate, and to negotiate such share or shares.

* Government Promissory Note No. of 18 of the % Loans for Rs. 500

† Share Certificates No. of 18 of the Bank, &c.

You shall further adhere strictly to such laws as have been or may be passed by the Governor-General in Council for the guidance of persons holding certificates for the collection of debts due to the estate of the deceased persons.

Seal.

Judge.

FORM OF CERTIFICATE.

To

A. B.

Whereas, in pursuance of the orders of this Court, dated
in the matter of the estate of the late
this certificate is granted to you, agreeably to the provisions of Act XXVII. of 1860. You are hereby authorized and empowered to collect all debts due to the estate of the said
giving acquittances for all sums received by you.

You are further empowered to receive interest on the Government Notes and dividends noted in the margin, * and on the Bank shares marginally † noted, or parts thereof, due to the said estate. You are also empowered to receive any share or shares of such interest or dividends that may be due to the said estate.

* Government Promissory Notes No. of 18 of the $^{o}/_{o}$ Loan for Rs 0000

† Share Certificates No. of 18 of the Bank, &c.

You shall further adhere strictly to such laws as have been or may be passed by the Governor-General in Council for the guidance of persons holding certificates for the collection of debts due to the estate of the deceased persons.

Seal.

Judge.

CHARACTER BOOK.

MEMO. No. 16.

Forwards to the civil and criminal authorities in the Lower Provinces, for information and guidance, copy of Government (of Bengal) Order No. 205, dated 2nd May, 1861, in which it is requested that the following suggestion, from the officiating Civil Auditor, which has been approved by the Government of India, for the establishment of a Character Book, may be adopted in all offices of importance wherever such books do not really exist.

Circular Order Nos. 179. *Dated* 10*th June*, 1861. Character Book.

"As an incitement to work I established a Character Book in my office in which the whole history of every individual is to be found, and in which entries are made from time to time in my own hand-writing touching their qualifications, their industry, or otherwise.

Nature of the Book.

II. "I would be glad to hear of the introduction of a similar book into all public offices. Its main advantages are that the head of

Its advantages.

the office (who should, of course, keep it carefully under lock and key) is able to judge for himself in cases of vacancies who is most worthy of promotion, and in cases of solicited indulgence also to determine whether such indulgence may be fitly accorded or not. Thus the diligent Clerk has an incitement for industry and zeal, while the lazy or inefficient man knows that his advancement is hopeless, unless he exert himself, and a complete check is placed upon nepotism, which too frequently enables the drone to eat the honey which the bee has made.

Its effects.

III. "I have satisfactory proofs that this "Character Book" is of use. For instance, my Attendance Book which used to show eight, nine, and sometimes twelve absentees, now rarely exhibits more than one or two, and frequently none. Then I find less time wasted on luncheon and other excuses, and, in short, I see more industry and activity displayed than I did six months ago, while I think that the industrious have a confident feeling that their work does not go unseen, or will remain unrewarded in the end."

CHEMICAL QUESTIONS.

Circular Order No. 207. Dated 24th June, 1842.

The civil and criminal authorities in the Lower and Western Provinces are hereby informed that a rule has been established under the directions of the Supreme Government, for all references regarding chemical questions and operations on account of Government being made direct to the Professor of Chemistry, Medical College, Fort William, who is privileged to issue and receive letters connected with his department free of postage.*

* The practice in respect of postage will now be governed by the revised Code of Post Office Rules, dated 30th September, 1871. Vide *Calcutta Gazette* of 18th October, 1871, page 1855.

CIVIL CAUSES.

Circular Order No. 155.
Dated 21*st November*, 1851.
Females as parties to suits how to be recorded.

The practice of females coming into the Courts as parties to suits, without recording their names as wife or widow of such a one, or under some other indefinite designation has fallen, under the observation of the Court in sundry instances, and as it is not authorized by the law and is liable to objection, the Lower Court are requested invariably to notice such omissions, and to see that the deficiency be supplied before the plaint is entered on the file.

CIVIL COURTS.

Circular Order No. 79.
Dated 3*rd February*, 1845.
Rules to expedite Civil business.

2. With a view to expedite the transaction of Civil business, as far as may be practicable, consistently with a just regard to the requirements of law, the following rules are promulgated for the guidance of the Civil Judges and their Subordinates :—

No order for filing of pleadings, issue of process, &c. to be passed without a period for its fulfilment being specified.

I. No order for the filing of pleadings or presentation of exhibits for the issue of legal process whether of notice to the defendant or proclamation or subpœna for the attendance of witnesses, or for production of papers from the record, shall be passed without the simultaneous assignment of a specified period* for its fulfilment; provided, of course, that the order, whatever its object and purport, be susceptible of execution within a given period; and provided that, by existing enactments, no fixed period is allowed for such execution.

* This rule must be read in connexion with para. 25 of the Section headed "Act VIII. of 1859" of the present work, page 11.

II. To the record of every pending suit or miscellaneous case, shall be prefixed a Fly-leaf, on which shall be inscribed the title of every paper filed, in the order of its presentation, relatively to dates, with the date of such presentation, and of the order recorded, and specification of the period which may have been allowed for the fulfilment of that order.

Fly-leaf to be prefixed to record of pending or miscellaneous cases, shewing certain particulars.

III. On the expiry of that period, without execution of the order to which it relates having taken place, it shall be the duty of the *Sheristadar*, or other ministerial officer to bring the fact to the notice of the presiding authority, and to lay the record of the case before him, for such instructions as he may be pleased to issue.

Action to be taken when order is not executed within specified time.

CONSTRUCTIONS.

The Courts of Sudder Dewany Adawlut for the Lower and North-Western Provinces are pleased to intimate that so much of Contruction No. 541, as declares that the period of 12 months allowed by Section 7 Regulation V. of 1799, corresponding with Clause 7 Section 16 Regulation III. of 1803, for the appearance of claimants to the property of persons dying intestate, shall be calculated from the date of the proprietor's decease, is rescinded as being at variance with the law cited. The period in question should be reckoned not from the date of the proprietor's decease, but from the date on which publication of the several advertisements required by the law cited shall be duly certified.

Circular Order L. P. & W. P. No. 144.
Dated 23*rd December*, 1846.
Property of intestates. Period for appearance of claimants how to be reckoned.

The Court notify the rescission of Construction No. 1319 according to their Full Bench decision of this date, to be published in due course in the case of Benode Lall Singh, mookhtear of Brijo Soondree Dossee, mother of Baneemadhub and Neelmadhub Singh, both deceased. The first application to the Court under Sections 1 and 2 Act XIX. of 1841 may be made by a duly constituted *vakeel*, although the solemn declaration required by Section 3 must be made in open Court by the applicant in person except in the case of Hindoo and Mahomedan ladies of rank, from whom it may be received by a commission issued as in other cases.

Circular Order No. 145.
Dated 10*th September*, 1851.
Application under Sections 1 and 2 Act XIX. of 1841 and declaration under Section 3 how to be made.

COPIES.

With a view to uniformity of practice, the Court are pleased to resolve that henceforward the authorized rate of remuneration to copyists of papers in the Persian, Oordoo, or Bengalee language in your Court, to which parties are not entitled free of charge, shall be a rupee for 4,000 words, correctly written in a clear and legible hand, figures counting as words,† which is the same as the rate recently sanctioned by the Government for paying temporary *Mohurirs* employed to copy the proceedings of cases appealed direct to the Sudder Dewany Adawlut from the *Principal Sudder Ameen's* Courts.

Circular Order No. 101.
Dated 4*th September*, 1840.
Copying rates for Persian, Oordoo, or Bengalee documents.

2. In continuation of the Court's Circular No. 177, dated the 6th instant, * intimates that the class of unsalaried men known as "Nukkul" and "Taid Noveeses" must be peremptorily excluded from the subordinate Judicial Courts.

Circular Order No. 178.
Dated 13*th May*, 1861.
Nukkul and taid noveeses dispensed with.

* On the subject of establishments for the subordinate Courts.
† See foot-note at next page.

3. When a copy of the decrees or judgments is required by the parties to the suit, it must, in accordance with the provisions of Section 198 of Act VIII. of 1859, be given free of charge, and must be prepared by the office Mohurirs. But when any person, who is not a party to the suit, requires a copy of a decree or other document, or when the applicant, though a party in it, requires a copy of any other document than the decree or judgment, the Court see no reason why he should not be charged with the cost of making it. To supply such copies the following staff of copying Mohurirs should be entertained :—

Copies granted to parties under Section 198 C. P. C. to be prepared by the office Mohurirs. Copies otherwise granted to be charged for, and to be made by special establishment.

In the Court of a Principal Sudder Ameen,* 3 copyists.
" Moonsiff 1 ditto.

The copying Mohurirs should be strictly prohibited from doing any other than their own copying work, and are to be remunerated by the fees charged to those requiring the copies, which are to be as follows :—

Copying Mohurirs to do no other work.
Fees for copying and examining.

For copying 750 English words ... 1 Rupee.†
For examining ditto ditto ... 8 Annas.†
For copying and examining 1,840 vernacular words 1 Rupee.

The remuneration for copying on account of Government will continue as at present, *viz.*,

Remuneration rates on account of Government.

For copying and examining 2,000 English words 1 Rupee.†
For ditto ditto 4,000 vernacular words ... 1 Rupee.†

The bills for copying should be checked and passed by the Judge of the Court, and the fees carried to a regular account when paid in by applicants for copies. The remuneration is to be paid to copyists once a month.

Bills how to be checked, and accounts how to be adjusted.

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* Now Subordinate Judge.

† Modified as regards unauthenticated copies by High Court's C. O. No. 18, dated 23rd June, 1870, extended to subordinate Civil Courts by C. O. No. 30, dated 19th September, 1870.

4. There being reason to believe that specifications of additional documents are sometimes inserted in applications for copies of papers, after the presentation of the application and the passing of an order for granting copies of the papers originally applied for, the Court, with a view to prevent such a practice, direct that petitioners be in future required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers.

Circular Order No. 8.
Dated 7th April, 1843 L. P. and 19th May, 1843 W. P.
Petitioners to mention the number of documents of which transcripts are required.

5. The Court request that whenever applications are made to the several civil and criminal authorities in the Lower Provinces for copies of any letters from, or resolutions passed by, the Court, the said authorities will refer the applicants to the Court instead of granting the copies asked for.

Circular Order No. 47.
Dated 19th April, 1844.
Applications for copies of the Sudder Court's letters and Resolutions.

6. This rule is not to be considered to apply to the sentences of the Nizamut Adawlut in criminal trials.

COPPER COINS.

Forward for information of District Judges and for communication to Moonsiffs copy of an order of the Government of Bengal No. 691, dated 18th March, 1854 directing them to comply with such orders as they may receive from the Officiating Accountant on the subject of distributing half-pice pieces to such persons as may apply for the same.

Circular Order No. 43.
Dated 7th April, 1854.
Distribution of half-pice pieces.

CORRESPONDENCE.

Circular Order No. 30.
Dated 9th December, 1853.
Indexes of correspondence.

In pursuance of the orders of Government requests that all Civil and Sessions Judges in the Lower Provinces will take measures for introducing and regularly keeping up registers, or indexes to their official English correspondence in an uniform manner.

2. Calls the attention of civil and criminal authorities, Lower and Extra Regulation Provinces, and requests that they will strictly adhere to the instructions of the Government,* requiring that all public letters shall shew the name and official designation of the writer with the number and date at the top of each letter.

Circular Order No. 143.
Dated 6th July, 1859.
Name and official designation of writer and No. and date of letter to appear at the top of each letter.

3. The following order of Government is forwarded for information :—

Circular Order No. 161.
Dated 2nd June, 1860.
Rules for the simplification and improvement of English correspondence.

No. 487.

From H. Bell, Esq., Under-Secretary to the Government of Bengal, Fort William, the 5th May, 1860.

SIR,

I am directed to forward herewith for the information of the Court and for communication to the officers subordinate to them, a copy of the rules sanctioned by the Lieutenant-Governor, with a view to the simplification and improvement of the system of English correspondence in Government offices.

2. The Lieutenant-Governor desires that these rules be introduced and strictly enforced in all offices, and that all officers will instruct their clerks and writers how to carry them out.

3. Instructions regarding these rules will be communicated to the several Magistrates by the Commissioners to whom they are subordinate.

* Originally issued to civil and criminal authorities with Sudder Court's C. O. No. 2307, dated 8th July, 1842.

RULES.

The 5th May, 1860.

I. No letter of any kind is ever to accompany a monthly bill for payment of salaries or any contingent bill which is neither unusual or extraordinary, nor likely to be disputed, or any bill regarding which only such short explanation is necessary as can be submitted in a few words at the foot of the bill or in a side column.

Letters not to accompany ordinary bills, or such as require only a few words of explanation.

II. In cases where grants are made or charges sanctioned by Government through its Secretary, the disbursing officer is not to send copies of the order of Government sanctioning the charge either to the Civil Auditor, when he submits the bill for audit, or to the Sub-Treasurer, when the bill is presented for payment, or to the Accountant when he forwards his inefficient balance. A copy of the order sanctioning the charge is sent to the Civil Auditor and to the Accountant, and when payment is made at the general Treasury, to the Sub-Treasurer from the Secretary's office direct. It is, therefore, sufficient to quote in the bill the number and date of the Government order. This rule only applies to charges sanctioned by Government.

Copy of Government Order sanctioning a charge need not be sent with bill; number and date only to be quoted.

III. In all cases of leave either solicited by a Deputy Collector or Assistant in the Survey or by an Assistant or Deputy Magistrate, or by a Subordinate Civil Judge, or by any other officer for whose leave the sanction of Government or the Board, or the Sudder Court is required, the following rules are to be strictly observed. When the application is submitted in a vernacular proceeding, the said document is to go no further than the office of the first officer receiving it. That

Rules in all cases of leave granted by Government Sudder Court or Board.

officer, be he the Magistrate, or the Collector, or the Superintendent of Survey, or the Judge, or any other person, will in such a case transmit a short letter from himself, soliciting the Commissioner or the Registrar of the Suddor Court, or the Secretary to the Board, or the officer immediately corresponding with him to grant, or to procure the grant of the leave solicited. If the original request be in an English letter, it will be sufficient for the officer to send it on, in original, to the higher authority with an endorsement in those words, "Forwarded with a recommendation that the leave may be granted;" and in all cases where a letter and not a proceeding in the vernacular asking for a simple leave of absence is transmitted through two or three,* or any number of authorities, a similar endorsement and signature at each stage without any additional letter, will be sufficient guarantee that the request has been duly weighed and considered by the transmitting authority.

In all other cases.

IV. In all other cases where a letter from either a subordinate to a higher authority, or *vice versa*, contains nothing but a piece of information for the future guidance of such authority, or a piece of information sought for to complete any proceedings, or to rectify any error, or a direct affirmative or direct negative to any question put either by the Board, the Sudder Court, the Government, or the Secretary of State for India, it will be quite sufficient if the letter be endorsed or passed on with the signature of each successive authority. The transmitting authority, to retain a trace of the letter, should make a memorandum (duly numbered and dated) in his Record Book, but the same fact is not to be repeated in two, or, as is sometimes the case, in three successive covering letters. nor to be entered in the record by a copy of the letter at length.

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* Vide High Court's C. O. No. 7, dated 2nd March, 1864.

V. When a bill is sent by a subordinate officer to a Commissioner or Judge for countersignature, the officer who countersigns, must send the bill direct to the Civil Auditor, instead of returning it to the drawer.

Bills countersigned by Commissioner or Judge to be sent on direct to Civil Auditor.

VI. No letter is to accompany a monthly, quarterly, or yearly statement of any kind which explains itself, or in regard to which a distinct and elaborate report is not required. The signature of the transmitting officer with date and number to the document at the foot of the statement will be sufficient in all such cases.

Letter not to accompany periodical statements which explain themselves.

VII. It should be the aim of every officer to reduce as much as possible the amount of clerical labour in his office by the introduction of lithographic forms. All statements, forms, returns, such regular monthly bills as take some time to prepare and any other documents which are in frequent use, should be lithographed. For instance, the forms of takeeds, generally used in the offices of the Commissioners of Divisions, might be introduced in all offices and forms of application to a superior for sanction to items of expenditure, &c., &c. The lithographic forms will be executed at the Alipore Jail Press, and each department or office will be separately debited with the cost of the lithography of the forms indented for; proper check being exercised in the Stationery Department over all applications for such forms which must be submitted in accordance with the rules in force.

Lithographic forms enjoined for returns, monthly bills, takeeds, &c. To be executed at Alipore Jail Press.

VIII. Memorandums and endorsements should be substituted generally as much as possible for covering letters in forwarding documents, when a brief remark

Memorandums and endorsements to be substituted for covering letters.

in reference to the documents will suffice; all such memorandums and endorsements should be numbered and dated.

"Bundle system" to be introduced.

IX. Wherever it is not already in use, the "bundle system" of filing English correspondence must be introduced at once. The rough drafts of letters issued and the original letters received on the same subject must be docketed and tied up together in separate bundles. This will not supersede the necessity of entering the letters issued into the letter books with a view to the preservation of the document; but it will save a great deal of time in searching for papers and collecting them when referred to; only important letters need be copied into the books at full length. Abstracts of all other papers will be sufficient, and these may be entered as shewn in the margin.* The bundles of correspondence of the current year should be kept ready for immediate reference in a press divided off into compartments marked with the designations of the several offices with which correspondence is ordinarily conducted. At the end of the year, the bundles may be broken up and the papers deposited in the record-room, all correspondence each separate office being tied together and labelled with the name of the officer and the year.

* To Commissioner or Superintendent of Police No. date
Forwarding application for 15 days' leave from No. date
Forwarding explanation of delay in the transmission of No. date
Forwarding explanation of discrepancy in column of statement No. date
Forwarding reports from subordinate officers stating that no cases of have occurred; that no provision for is required No. date
To Executive officer requesting that the cutcherry of be repaired, No. date
To Civil Assistant Surgeon requiring his attendance as a witness on 10th instant No. date
To ditto nominating him Registrar of Deeds, No. date
To Moonsiff or Deputy Collector, informing him that his leave is granted, and he may make over charge of his office to No. date
To Magistrate stating that his explanation is satisfactory. That reply to letter No. is requested.

CURATOR.

Circular Order No. 186
Dated 11*th February*, 1842.

The Court are pleased to prescribe the subjoined forms for use in cases under Act XIX. 1841.

FORM OF ENGAGEMENT OF CURATOR.

I, A B, having been appointed by the Judge of Zillah under the provisions of Act XIX. of 1841 to take temporary possession of the property of the late C D, do hereby solemnly promise and engage diligently and faithfully to discharge the trust committed to me, and to act in every respect according to the instructions given me and to the best of my judgment for the interests of the proprietors. I also promise to obey all orders of the Judge regarding the institution or the defence of suits, concerning or connected with the property committed to my charge. I further promise and engage to give acquittances for all sums of money collected by me, or debts or rents on account of the estate of the said C D, and to render a just and true account for whatever may be received by me, on account of the said estate, filing at the earliest practicable period an inventory of the property received by me, and also monthly in the Judge's office accounts in abstract, and at the end of every three months and on giving up possession of the property, accounts in detail, of my administration of the said property. I further promise and engage to adhere strictly to such laws as may be passed, for the guidance of Curators by the Governor-General in Council, and to such orders as I may receive from the Judge, and to derive no personal advantage whatever, directly or indirectly from the trust committed to me beyond the allowance granted to me as stated in my *sunnud* of appointment.

A B.

FORM OF SECURITY BOND.

Whereas A B has been appointed by the Judge of Zillah under the provisions of Act XIX. of 1841 to take possession of the property of C D, deceased, I, E F, do hereby engage and bind myself to stand security, and to be answerable for the faithful discharge of his trust by the said A B agreeably to the terms of his *sunnud* of appointment, a copy of which has been duly delivered to me. I also bind myself, my heirs, and successors not to sell, give, or otherwise transfer or dispose of the property mentioned in the annexed Schedule, which I hereby pledge for the purposes of this engagement until the conditions thereof have been completely fulfilled.

(*Schedule of Property to follow here.*)

FORM of SUNNUD.

Sunnud to A B.

Whereas you A B have been appointed under the provisions of Act XIX. of 1841 to take temporary possession of the property of the late C D, you shall diligently and faithfully discharge the trust committed to you, and act in every respect according to the instructions given you, and to the best of your judgment for the interest of the proprietors. You shall obey all orders of the Judge regarding the institution or the defence of suits, concerning or connected with the property committed to your charge. You shall further receive payments

of debts of rents due to the estate of the said C D until otherwise ordered such power of collecting debts, however, to cease on the granting of a certificate under the provisions of Act XX. of 1841, or in the event of probate or letters of administration to the estate of the said C D being granted by Her Majesty's Supreme Court of Judicature; and you shall give acquittance for all sums of money collected by you, as debts or rents on account of the estate of the said C D, and you shall render a true and just account of whatever may be received by you on account of the said estate filing at as early a period as practicable an inventory of the property received by you, and also monthly in the Judge's office accounts in abstract, and at the end of every three months, and on giving up possession of the property accounts in detail of your administration of the said property. You shall further adhere strictly to such laws as may be passed for the guidance of Curators by the Governor-General in Council, and to such orders as you may receive from the Judge, and you shall derive no personal advantage whatever directly or indirectly from the trust committed to you beyond the allowance hereby granted to you of 5 per centum on the personal property and on the annual profits of the real property placed under your charge, and you shall exercise the power of Curator under this *sunnud* until the determination of the summary suit now pending respecting the right to possession of the said property, or until otherwise ordered by this Court.

Schedule of Property placed under the Curator

(*To follow here.*)

DECLARATIONS.

Circular Order No 37.
Dated 6th January, 1854.

Forwards to the civil and criminal authorities in the Lower Provinces for information and guidance, the accompanying copy of a letter No. 1069, dated the 29th ultimo, from the Secretary to the Government of Bengal, and enjoins the strict observance of the rule laid down in its 2nd paragraph.

Declarations required of public servants by the law.

"I am directed by the Hon'ble the Deputy Governor of Bengal to acknowledge the receipt of your letter No. 1573 of the 13th September last, and to observe in reply that so long as the law remains in its present state, requiring public servants, whether in the judicial or executive branch of the service, to make a Declaration* before entering upon their duties, either generally

* Section 13 of the Bengal Civil Court's Act VI of 1871 prescribes the form for District Additional and Subordinate Judges and Moonsiffs. Vide High Court's C. O. No. 11, dated 28th March, 1872.

or in a specific office, it is necessary that such declarations should be made in obedience to the law. It is not proper that the acts of public officers should be liable to be called in question by reason of the neglect of what the law regards as an essential form.

To be made and recorded.

2. "Wherefore His Honor desires me to request that the Court will issue such instructions as may ensure the strict and universal observance of the law in this respect for the future. All declarations should be recorded in the office in which they are made, so as to be forthcoming in case of need, and the fact reported to the Court."

DECREES.

Circular Order No. 131. *Dated* 23*rd May*, 1851. Drawing out of decrees.

Inconvenience having been experienced by original decrees being drawn out upon a long roll of paper written on one side only, the Court direct the observance of the following rule in the preparation of such decrees.

Description of paper to be used and mode of engrossment.

2. The decrees of the Judges and Principal Sudder Ameens, which are intended to remain with the record, shall in future be engrossed as prescribed by Clause 2 Section 16* Regulation XXVI. of 1814, on European foolscap paper of an uniform *size*, the writing to be on four sides of each sheet instead of only on one as at present, and the number of sheets, each of which must be signed by the presiding authority composing the decree, to be connected by a tape or string passed through the paper at the two corners of the closed end of the sheet, so that each page may be turned back lengthways. The decrees of Sudder Ameens † and Moonsiffs must in like manner be

* Repealed by Act X. of 1861.
† Ceased to exist under the operation of Act XVI. of 1868.

prepared, except that they are to be engrossed on superfine country paper.

3. It having been represented to the Court that, notwithstanding the instructions contained in Circular Order No. 131 of the 23rd May, 1851, much inconvenience still continues from the practice of the Lower Courts writing their decrees on long rolls of paper, and this complaint appearing to the Court to be well-founded—it is hereby again ordered that in future the Lower Courts shall have their decrees drawn out strictly according to the directions of that Circular Order, the rules contained in which are also to be applied to copies of decrees granted to parties in a suit according to Circular Order No. 143, dated 8th August, 1851.

Circular Order No. 9 Dated 31st March, 1853. Preceding Rules again enforced.

Made applicable to copies of decrees.

4. In copies of decrees granted according to Article 3 Schedule B Regulation X. of 1829,* the sheets of stamped paper shall only be written on one side, and they are not to be fastened with paste one to the other, but shall be attached to each other by a strong tape or string passing through the top of the sheets, each sheet being signed and sealed separately as now.

Stamp paper for copies to be written upon one side, to be connected by tape or string, and to be signed and sealed separately.

5. The Court further direct that the paper on which the presiding Judges of every grade of Court write their judgments according to Act XII. of 1843 † shall be as nearly as possible uniform in size, and arrangement with the paper to be used, as above directed, for copies to be given to parties in a suit.

Paper for judgments to be uniform with above.

* This Regulation has been repealed by Section 1 Act XXXVI. of 1860, and copies of decrees are now granted with reference to Article 7 Schedule 1 Act VII. of 1870.

† Repealed by Act X. of 1861 ; the writing of judgments being now regulated by Sections 184 and 185 Act VIII. of 1859.

DISTANCE TABLES.

The Judges will cause to be framed with due care (revising it themselves before adoption) a table in the vernacular, for suspension in each and Moonsiff's cutcherry * showing the computed distance of each village within the jurisdiction from the Court station the number of days allowed for the service of the process calculated at the rate of 5 coss or 10 miles per diem going and returning.† This table being exposed under the signature and seal of the Judge in each Moonsiff's Court for general information, no mistake can thereafter occur or extra demand be made.

Circular Order No. 190.
Dated 11*th March*, 1842.

2. The Court request that Judges will be careful to satisfy themselves that the distance tables prescribed in of Circular Order No. 190 of 11th March, 1842, are properly kept up, never altered, and will have the goodness to transmit to this office with as little delay as possible a complete copy of the distance table of each Moonsiff's jurisdiction in their Zillahs.

Circular Order No. 62.
Dated 9*th April*, 1855.

EDUCATED PERSONS (EMPLOYMENT OF)

Furnishes copy of the following Rules to the civil and criminal authorities in the Lower and Extra Regulation Provinces,

Circular Order No. 128.
Dated 13*th December*, 1858.

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* Since extended as regards tables of distances to "Courts of the Judges of all grades." See High Court's C. O. No. 10A, dated 26th April, 1864, para. 4.

† In the matter of the number of days allowed for service and the number of miles per diem ; see also para. 3 of the C. O. No. 10A of 1864 as modified by C. O. No. 31, dated 25th September, 1867. While these sheets, however, are going through the press, the subject of process serving is being treated, and rules being framed by the High Court under Sections 20 and 22 of the Court Fees Act VII. of 1870.

with reference to the Court's Circular Order* No. 80 of the 2nd May, 1856.

RULES.

For giving better effect to the Notification † of July 9th, 1855, regarding the employment of educated persons, as sanctioned by Government Orders No 1456, dated 3rd September, 1858.

Candidate when and how to be examined.

In every case in which there is the smallest doubt as to the candidate having received a fair elementary education, he shall be examined before being appointed by being required at the least to read audibly and with intelligence, and half a page of an ordinary printed book and to write intelligibly from dictation an equal amount.

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* Not re-produced in this work, because it referred to periodical returns of appointments made which have since been discontinued by a Resolution of the Government of Bengal in the General Department, dated 2nd December, 1869, which concludes in these terms—"Under these circumstances, and as it appears, that no necessity exists for requiring any longer the submission of the returns in question, the Lieutenant-Governor is pleased to direct their discontinuance for the future. In all other respects the requirements of the rules in question will continue in force, and it will be the duty of all officers nominating to appointments to be careful that no person, unable to read and write, is ever appointed to any post of a higher salary than Rs. 10. It will devolve on Commissioners of Divisions to see that the orders of Government on this point are strictly observed." *Vide* Government Circular No. 3976, dated 2nd December, 1869.

† GOVERNMENT NOTIFICATION.

Dated 9th July, 1855.

"From and after the 1st of January, 1857, no person shall be appointed by the head of any office or department to any situation in the public service, in any Mofussil Regulation district, the monthly salary of which is more than six rupees, unless he can read and write his own vernacular language, it shall, however, rest with the Government, or with any authority duly empowered by Government, to suspend the operation of the rule in any case in which special circumstances may render it advisable to do so.

"The several Mofussil officers are at the same time directed to give a preference to persons who can read and write over those who cannot, for all offices, however small the salary, unless where obvious reasons exist for over-looking such qualifications.

(Sd.) W. GREY,

Secretary to Government of Bengal.

The candidate's acquirements must be tested (as above) or certified to (from personal knowledge) by either the officer making the appointment some European gentlemen in or out of Government service, or some native official holding an appointment of not less than Rs. (100) one hundred a month.

His acquirements how to be tested.

When a post of more than Rs. 6 (six)* has to be filled up without delay, and no one able to read and write, is immediately available, the person, who may be put into the appointment, shall, under no circumstances, draw more than Rs. 6 (six) a month (whatever the sanctioned salary of the place may be), until he is duly qualified under these rules. And meanwhile he shall be considered only as a temporary incumbent, and be liable to be displaced at any time by a properly qualified person.

Limit of salary for illiterate employees.

It is to be borne in mind that these rules and the Notification of July, 1855 refer to acting and temporary appointments equally with permanent ones.

These rules to apply to acting and temporary appointments as well.

Any special case in which it may be considered absolutely necessary to suspend the operation of these rules, or of the Notification of July, 1855, must be made the subject of a special report to Government with whom alone it rests to authorize exceptions thereto, and no Mofussil officer in a Regulation district is to consider himself at liberty to make any such exception of his own authority.

Special cases how to be dealt with.

Head Masters of Zillah Schools and Deputy Inspectors of Schools are to examine any persons that may be sent to them for this purpose by a Mofussil

Head Masters and Deputy Inspectors to examine persons sent to them.

* Raised to Rs. 10 by Government Circular, dated 18th January, 1862.

officer, having appointments in his gift on the written requisition of such officer; the requisition should specify the subjects in which the candidate is to be examined, such as reading, writing from dictation, arithmetic, mensuration, geography of Bengal, or the world, and so forth.

ENGLISH DOCUMENTS.

Circular Order No. 184.
Dated 4th February, 1842, *W. P.*
Dated 18*th idem, L. P.*

The Court are pleased to prescribe the following rules in modification of the Circular Order No. 54 of the 18th (Western Provinces 31st) October, 1839.

English documents. Filing of vernacular translations optional except when wanted by native Judge.

1. It is to be left to the option of the party filing an English document to accompany it with a translation in the Oordoo or Bengalee language; but the native Judge, before whom the suit may by pending, is competent to call on such party to file a translation when it may seem to him to be wanted.

Correctness of translation when not to be questioned.

2. No question is to be entertained as to the correctness of any translation, if both parties agree to receive it as correct, or if the point, on which the correctness is doubted, be one not essential to the decision of the case.

Doubt may be referred to Judge.

3. The native Judges are, however, to be at liberty to refer to the Judge any doubt as to the accuracy of a translation on which they may wish to obtain his instructions.

ESTABLISHMENTS.

Circular Order No. 44.
Dated 15*th April*, 1854.
Tabular form for applications relative to changes of establishment.

In pursuance of the orders of Government, the civil and criminal authorities in the Lower and Extra Regulation Provinces forward the accompanying form

of a tabular statement, and request that whenever applications for changes of establishment are made, they will invariably use it.

Office to which the proposition refers.	Nature of the change.						PROPOSITION.										Casual or extraordinary.	Grounds of proposition.
							Permanent.						Temporary.					
	Present scale.			Proposed scale.			Increase per month.			Decrease per month.			Increase per month.			Decrease per month.		
	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.		

Requests that, in all future instances of an increase or reduction of establishment, the civil and criminal authorities in the Lower and Extra Regulation Provinces will submit their tabular statement in the form indicated in the accompanying extract (paragraphs 2 and 3) of a letter from the Secretary to the Government of India, to the Chief Secretary to the Government of Fort St. George No. 1123, dated the 25th September, 1856.

Circular Order No. 112. *Dated* 10*th March*, 1858.

"Para. 2. I am directed to take this opportunity of observing that a principal object of such tabular statements is to enable the Government of India to perceive at a glance the total present and proposed expenditure upon any institution or

Principal object of such tabular statements.

establishment in connection with some particular item, of which it is intended to increase or diminish the charge.

"3. This object is not attained if the tabular statement furnish information only concerning the particular item and not concerning the whole establishment involved, and I am, therefore, to request that, as a general rule, in making any proposition to the Supreme Government for increase or decrease of expenditure, the financial comparison indicated by the two headings "Present and Proposed scale" may include the whole establishment concerned."

The present and proposed scales to include the whole establishment concerned.

2. In pursuance of the orders of Government forwards for information of civil and criminal authorities in the Lower and Extra Regulation Provinces, copy of a resolution of the Government of India in the Financial Department No. 4745A, dated the 29th ultimo.

Circular Order No. 106. *Dated 27th November,* 1857. Establishments. Expenditure sanctioned, but not incurred.

"His Lordship in Council directs that all officers, who submit detailed statements of their establishments to the Civil Auditor at the close of the official year, may be instructed to annex a note to their statements, shewing those items of expenditure which, though sanctioned, have not been actually incurred, and that the Civil Auditor may be desired to follow the same course in embodying their returns in his general book of establishments. By this means the actual amount of expense incurred in any department as well as the total amount sanctioned by Government will be seen at a glance."

EXECUTION OF DECREES (IN CALCUTTA.)

The following instructions to the civil and criminal authorities in the Lower and Western Provinces on the subject of Act

Circular Order No. 140. *Dated 1st March,* 1841.

XXIII. of 1840 are promulgated for general information and for guidance as occasion may require:

Processes how to be forwarded to Deputy Sheriff of Calcutta.

1*st.*—Every process (civil or criminal) will be forwarded in an envelope to the address of the Deputy Sheriff of Calcutta, either by dawk * or by the hands of a peon or other public officer as may be most convenient with a letter drawn up agreeably to the annexed form marked A.

Money how to be remitted.

2*nd.*—Any money that it may be requisite to send to the Deputy Sheriff will be remitted by a bill on the General Treasury from the Collector of the district.

Processes of subordinate Courts, to be forwarded through principal Court.

3*rd.*—All subordinate judicial officers will submit the processes of their Courts which may require execution under Act XXIII. of 1840, to their European principal to be by him forwarded in the prescribed manner to the Deputy Sheriff.

Processes how to be drawn up.

4*th.*—All processes will be drawn up agreeably to the forms marked *B* and *C*, or agreeably to such other forms as may from time to time be circulated by the Courts of Sudder Dewany and Nizamut Adawlut.

Expenses of witness.

5*th.*—The party, at whose requisition any witness may be summoned, must be prepared to pay to the witness such sum for his expenses, as the Judges of Her Majesty's Supreme Court † may consider reasonable and proper.

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* To be post-paid and the postage for return of service to be provided for. See para. 2 of High Court's C. O. No. 20, dated 4th September, 1865.

† Now High Court in its Original Side.

6*th*.—The Judges and Magistrates of the Zillah Courts will be careful that their own processes are drawn up correctly; and they will also ascertain that the processes of the Subordinate Courts, that may be forwarded to the Deputy Sheriff, are drawn up agreeably to these rules and to the Acts and Regulations of Government.

Judges and Magistrates to see that processes are drawn up correctly.

A.

To the Sheriff of Calcutta.

Sir,

I beg leave to enclose you (a notice* to be served on the parties therein named,) which I request you will have the goodness to present to the Judges of Her Majesty's Court agreeably to Act XXIII. of 1840.

2. † It will rest with the party at whose instance the process has been issued to pay the expenses of serving it.

B.

Criminal Processes.‡

C.

Civil Processes.

No. I.

Summons.

[The form of summons is not given here, because it has been superseded by the form provided in Schedule B of Act VIII. of 1859, which now regulates the Civil Procedure in Calcutta.]

No. II.

Proclamation for the Attendance of the Defendant.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

To Sheikh Edoo, of Cossitollah, in Calcutta.

Whereas Ramdhun of Byedbatty has instituted a suit against you in this Court (or in the Court of the Moonsiff of Byedbatty,) for the recovery of three hundred rupees, and whereas a notice was duly issued requiring you to

* Or (a proclamation to be affixed to the outer door of the house in which the parties reside) or (a subpœna to be served on the witnesses therein named) or a warrant to seize and apprehend the witnesses therein named) &c. *mutatis mutandis.*

† Added by C. O. No. 213, dated 15th July, 1842 *vide infra.*

‡ The criminal forms are entered in the Nizamut Adawlut Circular Order Book.

attend and to deliver an answer to the plaint on or before the 22nd day of April, 1841, and whereas it appears from the return of the Nazir (or from the return of the Deputy Sheriff of Calcutta), that after diligent search you were not to be found, and that the said notice was not served upon you according to the exigence thereof; proclamation therefore is hereby made agreeably to Regulation II. of 1806,* and that if you do not appear in person or by *Vakeel* on or before the 15th day of May, 1841, the Court will proceed to try the cause *ex parte*, and give judgment, as if you had appeared and answered to the plaint.

Given under my hand and the seal of the Court, this 25th day of April, 1841.

Seal.

A B, *Judge.*

[Forms 3 *(Subpœna)* and 4 (*Warrant for the apprehension of a witness*) have been superseded by forms prescribed by C.O. No. 58, dated the 28th December, 1854, given in the text as III, IIIA, IIIB. IIIC, and IV, "adapted to the provisions of Act XIX. of 1853."†]

No. III.

No. of Suit.

SUMMONS.

of chowkee Plaintiff,

versus

of chowkee Defendant.

of chowkee Witness.

To

TAKE notice that as has named you as a witness, on his part, in the above case, you are hereby peremptorily required to attend this Court to give your evidence in the above cause, and to produce the under-mentioned documents at 10 o'clock in forenoon on the 185 corresponding with 126 B. S., and so on in like manner from day to day until you have leave to depart; in

Civil Court of Zillah.

* Repealed by Act X. of 1861; and no such proclamation enjoined by C. P. Code.

† Repealed except Sec. 19 and 26 by Act X. of 1861, as regards suits or proceedings under Act VIII. of 1859. The forms however, of *summons* (Nos. III. and IIIB,) given in the text answer to Sec. 152 of the C. P. Code, and the form of *Proclamation* (No. IIIA,) and of *Purwannah* (No. IIIC,) to Sec. 159. Similarly the form of *warrant* for apprehension would now fall under Sec. 168.

default of appearance, you will be proceeded against according to law. Your diet and travelling allowance, *viz.*, Rupees are herewith sent.

Dated day of 185

Judge.

No. IIIA.

No. of suit. PROCLAMATION.

of chowkee Plaintiff,

versus

of chowkee Defendant.

of chowkee Witness.

To

WHEREAS the above-named witness on the part of did not appear when summons was issued upon him, proclamation is hereby made directing him to attend and give evidence, and to produce the under-mentioned documents in this Court at 10 o'clock in forenoon on the

Civil Court of Zillah.

185 corresponding with

126 B. S., and so on in like manner from day to day until he has leave to depart, otherwise, after that date, he will be dealt with according to law.

Dated day of 185

Judge.

No. IIIB.

No. of suit. SUMMONS.

of chowkee Plaintiff,

versus

of chowkee Defendant.

To of chowkee

said to be in possession of documents.

TAKE notice that as has stated that the following documents, *viz.*,

Civil Court of Zillah.

are in your possession, and has applied for the production of the same through you, you are hereby peremptorily required to produce the said documents, *or to cause them to be produced,* in this Court at 10 o' clock in the forenoon on the 185 , corresponding with 126 B. S., and so on in like manner from day to day until you have leave to depart, otherwise you will be dealt with according to the law. Your diet and travelling allowance, *viz.*, Rupees are herewith sent.

Dated day of 185

Judge.

No. IIIC.

No. of suit. PURWANNAH.

To *Nazir of the Dewany Adawlut.*

of chowkee Plaintiff,

versus

of chowkee Defendant.

WHEREAS the under-mentioned absent witnesses on the part of have failed to appear within the prescribed period of a proclamation for their attendance, and cannot otherwise be found, you are hereby required to attach the property, real and personal, of the said witnesses to the value of Rupees and to file a list thereof with your return within days.

Civil Court of Zillah.

In making attachments, you are prohibited from including such articles of property as are exempted from distraint for arrears of rent, *viz.*, ploughs and other implements of cultivation, ploughing bullocks and tools, or implements used by the witnesses in their trades or professions. Herein fail not.

Dated day of 185

Names No.

Judge.

No. IV.

No. of suit. PURWANNAH.

To *Nazir of the Dewany Adawlut.*

of chowkee Plaintiff,

versus

of chowkee Defendant.

WHEREAS it appears that the under-mentioned Witnesses named on the part of have failed to appear according to the summons, notwithstanding the same was duly served upon them, you are hereby directed to apprehend them and cause their attendance at this Court within days. Herein fail not.

Civil Court of Zillah.

Dated day of 185

Names of absent witness or witnesses.

Judge.

No. V,

WARRANT FOR SECURITY TO BE FURNISHED BY A DEFENDANT.

To Mohammed Ally,

Nazir of the Court of Dewany Adawlut for the Zillah of Hooghly.

Whereas Moonshee Khyroolla has instituted a suit in this Court against John Smith for the recovery of twelve hundred rupees, and whereas the

said Moonshee Khyroolla has satisfied the Court by sufficient proof that the said John Smith intends to abscond and to withdraw himself from the jurisdiction of the Court. You are, therefore, hereby authorized and required to demand good and sufficient security in the sum of fifteen hundred rupees from the aforesaid John Smith for his personal appearance before this Court, and in the event of the said John Smith not giving good and sufficient security as aforesaid, you are further authorized and commanded to take the said John Smith into custody, and to bring him before this Court.

Given under my hand and the seal of the Court, this 10th day of May, 1841.

A B, *Judge.*

No. VI.

SECURITY BOND TO BE EXECUTED BY A DEFENDANT.

Whereas a suit has been instituted in the Dewany Adawlut of the Zillah of Hooghly by Moonshee Khyroolla, plaintiff, against John Smith, defendant, and whereas I, Ram Mohun Mullick, inhabitant of Sealdah, in the 24-Pergunnahs, have voluntarily become security for the appearance of the said defendant to answer to the said suit, and perform all such orders, as may be passed thereupon, until the final decree on it shall have been carried into execution, I do, therefore, hereby engage and bind myself, my heirs, and executors that the said defendant shall appear in person or by *Vakeel*, to make answer to the plaint against him in the suit aforesaid, on or before the 20th day of May, 1841, and further that the said defendant shall personally attend in the said Zillah Court whenever the same may be required by the Judge thereof at any time, whilst the above suit is depending before the Zillah Court, or before the final decree which may be passed thereupon by the above Court, shall be fully and completely carried into execution; and in default of which, and in the event of my not producing the said defendant when called upon, I will be answerable for such sum as may be adjudged against him, and for the due performance of whatever order or decree may be passed against him on the suit above-mentioned, provided the same does not exceed the sum of fifteen hundred rupees. Dated this 15th day of May, 1841.

Sealed and delivered in the presence of A B and C D.

RAM MOHUN MULLICK.

No. VII.

WRIT OF SEQUESTRATION.

To Mohammed Ally,

Nazir of the Court of Dewany Adawlut of Zillah Hoogh'ly.

Whereas Sheikh Syfoo has instituted a suit in this Court against Ram Sohaee Singh for the recovery of ten thousand rupees, and whereas the said Sheikh Syfoo has satisfied the Court by sufficient proof that he has just ground to apprehend that the said Ram Sohaee Singh means to dispose of his property, whilst the suit against him is pending, for the purpose of avoiding the execution of an eventual judgment against the said Ram Sohaee Singh, you are, therefore, hereby authorised and required to demand good and sufficient security from the aforesaid Ram Sohaee Singh, in the sum of twelve thousand rupees to make good the ultimate decision of the Court; and in the event of the aforesaid Ram Sohaee Singh, not giving good and sufficient security within the period of 24 hours, you are hereby further authorized and commanded to attach and sequestrate any lands, goods and effects, or other property, belonging to or possessed by the said Ram Sohaee Singh, to the amount of twelve thousand rupees, and to hold the same under attachment and sequestration until a final decision be passed by this Court.

Given under my hand and the seal of the Court, this 15th day of June, 1841.

A B, *Judge.*

No. VIII.

WRIT OF EXECUTION AGAINST THE PERSON.

To the Nazir of the Court of Dewany Adawlut for the Zillah of Hoogh'ly.

Whereas Munsaram was directed by a decree of this Court under date the 15th day of May, 1841, to pay to Edoo Sheikh, the sum of Rs. 500 and Rs. 50 for costs of suit, amounting to Rs. 550; and whereas the said Munsaram, having notice of the said decree, has omitted to liquidate the same. These are, therefore, to command you to apprehend the said Munsaram, and unless the said Munsaram shall pay to you the said sum of Rs. 550, in satisfaction of the said decree and costs, and the sum of Rs. 10 for the costs of executing this process, to produce him before this Court to be dealt with according to law.

Given under my hand and the seal of the Court, this 2nd day of June, 1841.

A B, *Judge.*

No. IX.

WRIT OF EXECUTION AGAINST THE EFFECTS.

To the Nazir of the Court of Dewany Adawlut for the Zillah of Hooghly.

Whereas Cossinath was directed by a decree of this Court, under date the 15th June, 1841, to pay to Mohammed Ally the sum of Rs 5,000 with interest at 12 per cent. per annum to the day of payment, which to this date amounts to Rs. 33-5-8 and Rs. 500 for costs of suit, amounting to Co.'s Rs. 5,533-5-8, and whereas the said Cossinath, having had notice of this decree, has omitted to liquidate the same. These are, therefore, to command you to levy the said sum of Co.'s Rs. 5,533-5-8 and the sum of Rs. 100 for the costs of executing this process by distress and sale of the lands, goods, and chattels of the said Cossinath ; and you are hereby ordered and directed to distrain the lands, goods, and chattels of the said Cossinath, and to sell and dispose of the same, within (not less than thirty days) unless the sum of Co.'s Rs. 5,633-5-8, for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

Given under my hand and the seal of the Court at Hooghly, this 20th day of June, 1841.

A B, *Judge.*

7th.—With reference to the Circular Order No. 140, dated 1st March, (Western Provinces 18th June) 1841, conveying instructions on the subject of Act XXIII. 1840, the Court circulate, for general information, the opinion delivered by the Acting Advocate-General on the course to be

Circular Order No. 218. *Dated* 15*th July*, 1842, *L.P.* and 22*nd August*, 1842, *W.P.* Procedure when claims are set up to property saleable under a Mofussil Court's writ.

pursued when claims are set up to property, for the sale of which a writ may have been issued by a Mofussil Court.

Writ how to be drawn up and executed.

8th.—A writ for the sale of property situated in Calcutta will be drawn up in the form No. 9,* which the Sheriff, after endorsement by a Judge of Her Majesty's Court, will execute in like manner as if the writ had been issued by that Court.

9th.—The Court further direct that the following be substituted for the 2nd paragraph of the form A of the Circular above-mentioned in issuing civil processes.

10th.—"It will rest with the party at whose instance the process has been issued to pay the expenses of serving it."

[Substituted *in loco* accordingly.]

OPINION OF THE OFFICIATING ADVOCATE-GENERAL, DATED 12TH JULY, 1842.

The Sheriff is expressly enjoined by Act XXIII. of 1840 Sections 2 and 3 to execute writs, warrants, and other process issued by the Mofussil Courts and judicial officers, precisely in like manner, as if the same had originally issued from the Supreme Court, to which alone he is made responsible for the due execution thereof; and in order to facilitate such execution, the Judge of the Supreme Court, who shall endorse the process, is invested with certain power as to correction of the process and other particulars.

In the instance before me, the Sheriff appears to have proceeded in the regular course to seize the rights and title of the defendants in execution in certain parcels of real property pointed out to him on the part of the plaintiffs. That right and title may be none at all, or may be qualified, or subject to mortgage, prior seizures, or the like. As the Sheriff seizes and sells at his own peril, or refuses to do so at his own peril, (by return of *nulla bona*, &c.), he in practice calls upon the parties calling upon him to seize, or pointing out the property to indemnify him whenever a third party claims an interest, and if both parties offer indemnity, he may, at his own peril, elect which indemnity he thinks the best, and either sell or release accordingly, being liable in damage to the opposite party, if he shall make out his case to be the true one.

* See form immediately preceding.

I would, however, suggest as an act of prudence that the Mofussil judicial officers mix themselves up in these matters as little as possible, and leave it to the parties interested to give the directions and information to the Sheriff, which, of course, they must do at their own charge and peril. It would in English Judges be thought not only a loss of dignity, but an act of impropriety, to interfere in any execution whatever, unless formally applied to judicially by some of the parties litigating. The Mofussil Judge, in the instance before me, corresponds with the Sheriff; nay goes so far as to engage for his expenses or fees. Such a proceeding may perhaps be regular, or even necessary in Mofussil executions, but will appear very strange in an English Court of justice.

11*th*.—The Court are pleased to prescribe the following forms for use, under Act XXIII. of 1840, in addition to those communicated with the Circular Orders Nos. 140 and 218, dated respectively, Lower Provinces, the 1st March, 1841, and the 15th July, 1842, Western Provinces, the 18th June, 1841 and the 22nd August, 1842.

Circular Order No. 130.
Dated 15*th May*, 1846. (*L.P. & W.P.*)
Additional forms under Act XXIII. of 1840.

Notice to respondent.

Proclamation for the attendance of the respondent.

Notice to mortgagor for the redemption of mortgage and conditional sale of land.

Notification of the death, dismissal, resignation, or absence of a vakeel.

Notice to plaintiff to prosecute a remanded case.

Notice to defendant to defend a remanded case.

Proclamation for the appearance of the plaintiff in a remanded case.

Proclamation for the appearance of the defendant in a remanded case.

Subpœna to produce books and papers.

Security bond to be executed by the surety of an appellant.

NOTICE TO RESPONDENT.*

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Buldeb Sircar, of Ameerpore, Pergunnah Kowas, Zillah Moorshedabad, ... *Appellant,*

versus

Kishen Peerya, widow of Nurnarain Roy, deceased, and guardian of Kishen Inder Narain Roy, infant,... ... ... *Respondent.*

To Kishen Peerya and so forth.

Whereas Buldeb Sircar has presented a petition of appeal praying for the reversal of the decision of the Court of the *Moonsiff*, dated 5th September, 1845, awarding to you possession of *Ta'look* Ameerabad in *Zillah* Moorshedabad, you are hereby required to acknowledge the receipt of this notice, and further to appear in person or by *Vakeel* in the Court of the Principal *Sudder Ameen*, and to deliver an answer to the petition of appeal on or before the

Given under my hand and the seal of the Court, this

Seal.

A B, *Judge.*

PROCLAMATION FOR THE ATTENDANCE OF THE RESPONDENT.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Buldeb Sircar, of Ameerpore, Pergunnah Kowas, Zillah Moorshedabad, ... *Appellant,*

versus

Kishen Peerya, widow of Nurnarain Roy, deceased, and guardian of Kishen Inder Narain Roy, infant, ... *Respondent.*

To Kishen Peerya and so forth.

Whereas Buldeb Sircar has presented a petition of appeal praying for the reversal of the decision of the Court of the *Sudder Ameen*, dated 5th September 1845, awarding to you possession of *Talook* Ameerabad, in *Zillah* Moorshedabad, and whereas a notice was duly issued, requiring you to attend and to deliver an answer to the petition of appeal on or before the day of ; and whereas it appears from the return of the Nazir (or from the return of the Deputy Sherift of Calcutta), that after diligent search, you were not to be found, and that the said notice was not served upon you according to the exigence thereof, proclamation therefore is hereby made that, if you do not appear in person or by *Vakeel* on or before the , the Court will proceed to try

* See Section 345 Act VIII. of 1859.

the cause *ex parte*, and give judgment as if you had appeared and answered to the plaint.

Given under my hand and the seal of the Court, this

A B, *Judge.*

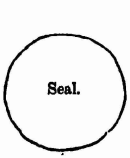
NOTICE TO MORTGAGOR FOR THE REDEMPTION OF MORTGAGE AND CONDITIONAL SALE OF LAND.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

To Baboo Ram Dass, Colootollah, in Calcutta.

Whereas Ramnarain Bose, of Byedbatty, has in a petition, dated the of which a copy is hereunto annexed, applied to this Court for foreclosing the mortgage and rendering conclusive the sale of certain landed property situate in this Zillah, agreeably to the provisions of the deed of mortgage and conditional sale which he holds. You are hereby required to take notice that if you shall not, in the manner provided for by Section 7 Regulation XVII. of 1806, and within one year from the date of this notice,* redeem the property mortgaged to the aforesaid Ram Narain Bose, the mortgage will be finally foreclosed, and the conditional sale will become conclusive.

Given under my hand and the seal of the Court, this 5th day of April, 1846.



A B, *Judge.*

NOTIFICATION OF THE DEATH, DISMISSAL, RESIGNATION, OR ABSENCE OF A VAKEEL.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Ramdhun, of Byedbatty, ... *Plaintiff,*

versus

Sheikh Edoo, of Cossitollah, in Calcutta, ... *Defendant.*

Mohammed Ally, of Pundooah, ... *Plaintiff,*

versus

Gholam Hossein, of Sobha Bazar, in Calcutta, ... *Defendant.*

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* Ruled to mean "from the date of the service of the Notice." See *Full Bench* case No. 1977 of 1867, Mohesh Chunder Sein, *versus* M. Tarinee.

Whereas Moonshee Chytun Churn, one of the vakeels engaged in the above-mentioned causes, depending in this Court (or in the Court of the Moonsiff of) has demised, * the parties thereto are required within six weeks (or two months) from this date to appear in person at the said Court, or to substitute other vakeels in the room of the said Moonshee Chytun Churn formerly appointed by them.

Given under my hand and the seal of the Court, this 5th day of April, 1846.

Seal.

A B, *Judge.*

NOTICE TO PLAINTIFF TO PROSECUTE A REMANDED CASE.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Govindram, of Baug Bazar, in the town of Calcutta, ... *Plaintiff,*

versus

Gholam Hyder, of Byedbatty, ... *Defendant.*

To Govindram, of Baug Bazar, in the town of Calcutta.

Whereas the case of Govindram, of Baug Bazar, in the town of Calcutta, *versus* Gholam Hyder, of Byedbatty, wherein you are plaintiff, which was decided by this Court, (or the Court of the Moonsiff of) under date has been remanded by the Court of for further investigation, (or to be tried *de novo,*) with directions that it be restored to its original number on the file of this Court ; and it appears on inquiry that no *Vakeel* is in attendance in this Court to represent you in this suit ; † take notice, therefore, that in the event of your failing to adopt measures either in person or by *Vakeel,* for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default.

Given under my hand and the seal of the Court, this

Seal.

A B, *Judge.*

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* Or has been dismissed, or has resigned, or has been long absent.

† Or, that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case.

NOTICE TO DEFENDANT TO DEFEND A REMANDED CASE.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Ramdhun, of Byedbatty, ... *Plaintiff*,

versus

Sheikh Edoo, of Cossitollah, in the town of Calcutta, ... *Defendant*.

To Sheikh Edoo, of Cossitollah, in the town of Calcutta.

Whereas the case of Ramdhun, of Byedbatty, *versus* Sheikh Edoo, of Cossitollah, in the town of Calcutta, wherein you are defendant which was decided by this Court (or by the Court of the Principal *Sudder Ameen*) under date the has been remanded by the Court of for further investigation, (or to be tried *de novo*) with directions that it be restored to its original number on the file of this Court, and it appears on enquiry that no *Vakeel* is in attendance in this Court to represent you in the suit; take notice, therefore, that in the event of your failing to adopt measures, either in person or by *Vakeel*, on or before the to make answer in the said suit, the Court will proceed to try the same *ex parte*, and give judgment, as if you had appeared and answered to the plaint.

Given under my hand and the seal of the Court, this day of

Seal.

A B, *Judge*.

PROCLAMATION FOR THE APPEARANCE OF THE PLAINTIFF IN A REMANDED CASE.

In the Court of the Dewany Adawlut for the Zillah Hooghly.

Govindram, of Baug Bazar, in the town of Calcutta, ... *Plaintiff*,

versus

Gholam Hyder, of Byedbatty, ... *Defendant*.

Whereas the case of Govindram, of Baug Bazar, in the town of Calcutta, *versus* Gholam Hyder, of Byedbatty, wherein you are plaintiff, which was decided by this Court, (or the Court of the *Moonsiff*,) under date has been remanded by the Court of for further investigation, (or to be tried *de novo*,) with directions that it be restored to its original number on the file of this Court; and whereas a notice was duly issued, requiring you to adopt measures to prosecute the said case, and whereas it appears from the return of the *Nazir* (or the Deputy Sheriff of

Calcutta) that after diligent search you were not to be found, and that the said notice was not served upon you according to the exigence thereof, proclamation is, therefore, hereby made that, in the event of your failing to adopt measures for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default.

Given under my hand and the seal of the Court, this day of

Seal.

A B, *Judge.*

PROCLAMATION FOR THE APPEARANCE OF THE DEFENDANT IN A REMANDED CASE.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Ramdhun, of Byedbatty, ... *Plaintiff,*

versus

Sheikh Edoo, of Cossitollah in the town of Calcutta, ... *Defendant.*

To Sheikh Edoo, of Cossitollah, in the town of Calcutta.

Whereas the case of Ramdhun, of Byedbatty, *versus* Sheikh Edoo, of Cossitollah, in the town of Calcutta, wherein you are defendant, which was decided by this Court (or the Court of the *Moonsiff* of) under date has been remanded by the Court of for further investigation (or to be tried *de novo,*) with directions that it be restored to its original number in the file of this Court ; and whereas a notice was duly issued requiring you to adopt measures to make answer in the said suit ; and whereas it appears from the returns of the *Nazir* (or the Deputy Sheriff of Calcutta,) that after diligent search, you are not to be found, and that the said notice was not served upon according to the exigence thereof : proclamation is, therefore, hereby made that, if you do not appear in person or by *Vakeel* on or before the to make answer in the said suit, the Court will proceed to try the same *ex parte*, and give judgment in the same manner as if you had appeared and answered to the plaint.

Given under my hand and the seal of the Court, this day of

Seal.

A B, *Judge.*

SUBPŒNA TO PRODUCE BOOKS AND PAPERS.

In the Court of Dewany Adawlut for Zillah 24-Pergunnahs.

Kalikishen Nag, ... *Appellants,*

versus

Ramneedee Bose and others, ... *Respondents.*

To , of Calcutta.

Whereas your attendance is required to give evidence in the above cause, you are hereby required personally to appear before the Court of Sudder Dewany Adawlut, on the day of next, and to take with you the registry books of the Bank of in which the under-mentioned notes of the said Bank are registered, *viz.*,

Nos. each for Sicca Rs. 500.

Nos. „ „ Rs. 1,000.

Given under my hand and the seal of the Court this day of 184

Seal.

A B, *Judge.*

SECURITY BOND TO BE EXECUTED BY THE SURETY OF AN APPELLANT.

Whereas an appeal has been preferred in the Court of Sudder Dewany Adawlut by William Hunter, from a decision passed against him, and in favor of George Thomas., by the Dewany Adawlut of *Zillah* Purneah; and whereas I , inhabitant of , have voluntarily become security for the performance by the said William Hunter of all orders which may be passed thereon: I do hereby engage and bind myself, my heirs, and successors that the said William Hunter shall pay the respondent, the said George Thomas, or his representatives whatever sum may be adjudged by the Sudder Dewany Adawlut to the said respondent or his representatives, in default of which, I, my heirs, and successors will be answerable for such sum as may be adjudged against him and for the performance of whatever order or decree may be passed against him in the appeal above-mentioned. Dated this day of 184

Sealed and delivered in the presence of A B and C D.

12*th*.—In supersession of the Court's Circular Order No. 145, dated 26th December, 1846, the Court are pleased to prescribe the following form of notice to respondents in appeal to the Privy Council for use under Act XXIII. of 1840:

Circular Order No. 39
Dated 16*th February*, 1854.

NOTICE TO RESPONDENT IN APPEAL TO PRIVY COUNCIL.

In the Court of Dewany Adawlut for the Zillah Hooghly.

A B, of Ameerpore, *Pergunnah* Kowas, Zillah Moorshedabad,... *Appellant*,

versus

C D, of Rajapore, *Pergunnah* Arsha, Zillah Hooghly,... ... *Respondent*.

To C D and so forth.

Whereas A B has presented a petition of appeal to the Queen in Council, praying for the reversal of the decree of the Sudder Dewany Adawlut, dated 1st January, 1854, awarding to give possession of talook Ameerabad in Zillah Moorshedabad, and whereas the said A B has furnished the required security, and conformed to all the requisitions preliminary to the transfer of the record of the suit to England; notice is hereby given to you of the same, and further that (under Rules 5 of the new Rules passed by Her Majesty in Council on 15th June, 1853, and published in the *Bengali Gazette* of 20th September, 1853), in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within the space of six calendar months from the arrival of the transcript, and the registration thereof in the Privy Council office, the appeal will stand dismissed without further order. You are hereby required to acknowledge the receipt of this notice.

Given under my hand and the seal of the Court, this

Seal.

E F, *Judge*.

13*th*.—The Court are pleased to prescribe the following forms for use under Act XXIII. of 1840, in addition to those communicated with the Circular Order No. 145, of the 26th December, 1846:*

Circular Order No. 47.
Dated 9th June, 1848.

* Superseded by C. O. No. 39, dated 16th February, 1854, given above.

NOTICE OF APPLICATION FOR LEAVE TO INSTITUTE A SUIT IN *forma pauperis*.

In the Court of Dewany Adawlut for the Zillah of 24-Pergunnahs.

To of , in the town of Calcutta.

Whereas has applied to be allowed to institute against you in *forma pauperis* for the recovery of Rupees and the application has been transferred to the Principal *Sudder Ameen* of this district for inquiry into the pauperism of the applicant. Take notice, therefore, that on your appearing before the said Principal Sudder Ameen on the day of 184 , in person or by *Vakeel*, you shall be permitted under Clause 6 Section 5 Regulation XXVIII. of 1814,* to show cause why the applicant should not be allowed to sue as a pauper, and you are hereby required to acknowledge the receipt of this notice.

Given under my hand and the seal of this Court, this day of 184

Seal.

A B, *Judge*.

NOTICE OF APPLICATION FOR THE DISCHARGE OF AN INSOLVENT DEBTOR.

In the Court of Dewany Adawalut for the Zillah of 24-Pergunnahs.

Plaintiff or Appellant,

versus

Defendant or Respondent.

To of , in the town of Calcutta.

Whereas now in imprisonment in the jail of this district at your instance, in execution of the decree passed against him under date the , has applied for his discharge and in provisions of Section 11 Regulation II. of 1806,† take notice, therefore, that on your appearing before this Court or before the Principal Sudder Ameen (as the case may be) in person or by vakeel within day from this day's date, you shall be permitted to offer your objections to the discharge of the above-mentioned debtor, and you are hereby required to acknowledge the receipt of this notice.

* This Regulation has been repealed by Act X. of 1861, and the notice in the text now issues under Section 303 Act VIII. of 1859.

† Repealed by Act X of 1861; the procedure in the matter being now regulated by Sections. 280 and 281 of Act VIII. of 1859.

Given under my hand and the seal of this Court, this day of 184

A B, *Judge.*

14*th.*—The Court are pleased to prescribe the following form for use under Act XXIII. of 1840, in addition to those communicated with the Circular Order of the 9th June last:

Circular Order No. 49.
Dated 14*th July*, 1848.

NOTICE TO HOLDER OF A DECREE OF THE SUDDER DEWANY ADAWLUT.

In the Court of Dewany Adawlut for the Zillah of Hooghly.

Casseenath Ghose, of Calcutta, ... *Appellant, Decree-holder,*

versus

Doorga Churn Dutt, of Hooghly, ... *Respondent.*

To Casseenath Ghose, of Calcutta.

Whereas the decree passed by the Sudder Dewany Adawlut on the in your favor against Doorga Churn Dutt, has been received in this Court for execution. You are, therefore, hereby required to acknowledge the receipt of this notice, and to appear in this Court (or the Court of the Principal *Sudder Ameen* of this *Zillah*), and proceed in the case in person or by *Vakeel* within days from the date of the service of this notice.

Given under my hand and the seal of the Court, this day of 184

A B, *Judge.*

EXECUTION.

The practice of keeping on the file cases in which the decree-holder has neglected to proceed in the execution, and in which his endeavours to point out property of the debtor have proved fruitless, is inconvenient

Circular Order No. 127.
Dated 12*th December*, 1834.
Execution cases when, and under what circumstances, to be struck off the file. When to be revived.

and unnecessary. The Court, therefore, desire that whenever the decree-holder fails for a period of six weeks to carry on the execution, or when the whole of the property pointed out by the decree-holder has been either sold or released from attachment in consequence of claimants proving their right thereto, the case should be struck off the file. In the event of a fresh application being made by the decree-holder, or his pointing out fresh property, the case will be brought on the file as a new revived case of execution.

2. Doubts appearing to be entertained as to whether the Civil Courts are competent to allow a decree-holder purchasing property sold at public auction in satisfaction of his decree to file his receipt to the extent of the sum awarded him, in lieu of paying the whole amount of purchase-money into Court, the Court acquaint Judges that it has been ruled that a decree-holder should be permitted, under the circumstances above stated, to give his receipt for the amount of his claim in payment of so much of the purchase-money of the property sold; provided the arrangement do not interfere with the equal claims of other parties, and that as respects the delivery of possession of the property, the same rules are observed in regard to him as would be applied to any other purchaser.

Circular Order No. 30.
Dated 18th January, 1839.
Decree-holder, purchasing property sold in satisfaction of his decree, may give his receipt for the amount of his claim in payment *pro tanto.*

3. Judges are requested to communicate the substance of this letter to the subordinate judicial functionaries of their district for their information and guidance.

EXEMPTIONS
(FROM PERSONAL ATTENDANCE)

Circulating list of persons proposed to be exempted from attendance in Court under Act VIII. of 1859 (Section 22.)

Circular Order No. 163.
Dated 20th June, 1860.

District.	Name and Residence.	Why proposed to be exempted.
Patna ...	Maharajah Bhoop Sing, Mohulla Dewan	High Rank.
Behar ...	Maharajah Joyperkash Singh of Deo Mongah	do.
Shahabad ...	Maharajah Moheshur Bua Singh of Doomraon	do.
Ditto ...	Huzrut Shah Kubeerooddeen Ahmud Syud Nusheen of Sasseram ...	do.
Tirhoot ...	Maharajah Moheshur Singh, Bahadoor, of Durbhunga	do.
Ditto ...	Rajah Rughoo Nundun Singh of Soorsun	do.
Sarun ...	Maharajah Rajender Kishore Singh, Bahadoor, of Bettiah	do.
Ditto ...	Maharajah Rajender Pertab Sahai, of Hutwah	do.
Ditto ...	Rajah Sew Nundun Singh of Shedbur...	do.
Monghyr ...	Rajah Joymungul Singh of Gidhour ...	do.
Bhaugulpore	Rajah Leelanund Singh of Khurruckpore	do.
Moorshedabad	His Highness the Nawab Nazim ...	do.
Rungpore ...	The Rajah of Cooch Behar	do.
Dacca ...	Rajah Sutt Shurn Ghosal	do.
Tipperah ...	Maharajah Eshan Chunder Manick, Bahadoor, of Ropanabad ...	do.
Nuddea ...	Maharajah Suttis Chunder Roy ...	do.
24-Perghs....	Rajah Pertab Chunder Singh ...	do.
Calcutta ...	Rajah Radhakant, Bahadoor ...	do.
Ditto ...	Rajah Kalikissen, Bahadoor, of Sobha Bazaar in Calcutta	do.
Burdwan ...	Maharajah Dheeraj Mahatap Chand, Bahadoor	do.
Beerbhoom...	Maharajah Bunwaree Gobind, Bahadoor	do.
24-Perghs ...	Prince Gholam Mahomed	do.
Rajshahye ...	Rajah Prosunnonath Roy of Degaputte	do.
Moorshedabad	Rajah Prosunno Narain Deb ...	do.

Circulates the nameof Maharajah Hitnarain Singh of Tikaree, as exempted from personal attendance in Civil Courts under Section 22 of Act VIII. 1859.

Circular Order No. 171. *Dated* 31*st October*, 1860.

[See also High Court's Circular Orders of

7th January, 1863, No. 1
21st February, 1863, No. 7
22nd July, 1864, No. 22
22nd September, 1864, No. 29
7th March, 1865, No. 3
15th February, 1866, No. 4A
18th April, 1866, No. 14
6th July, 1866, No. 25
20th February, 1867, No. 7
18th July, 1867, No. 21
12th July, 1870, No. 4] *

FEES (SHERIFF'S)

With reference to Act VIII. of 1852 circulates for the information and guidance, the civil and criminal authorities in the Lower and Extra Regulation Provinces, extracts as below from correspondence between the Court and Government.

Circular Order No. 188. *Dated 7th October*, 1852.

Extracts (paragraphs 2 and 4) from a letter from the Court of Sudder Dewany Adawlut to the Secretary to the Government of Bengal, No. 1308, *dated the* 28*th July*, 1852.

2. "II. The Court, after full consideration of the subject, recommend for adoption the rates as per margin. The scale has been framed with general reference to the accompanying return

Scale of fees for processes on what principle framed.

* *N.B.*—It is no longer the practice for the High Court to publish by Circular the names of individuals admitted to the benefit of Section 22 C. P. C. The publication is now effected by Government without the intervention of the Court, the names being notified in the *Calcutta Gazette*. See Government to Court, No. 5483, dated 15th December, 1870.

Names of Processes.	Rates of charges for executing each process.
Summons	2 Rs.*
Writs of execution against effects	4 „
Notices	2 „
Dustucks	4 „
Proclamations	2 „
Subpœnas	2 „
Writs of execution against persons	4 „
Warrant for apprehension of witnesses ..	4 „
Sequestrations ...	4 „
Warrants for security to be furnished by the defendants	4 „

received from the Sheriff's office showing what the fees, according to it, would have amounted to for the half-year ending the 30th June, 1851 and the 30th June, 1852. The Court, in fixing the scale, have gone on the principle of having an uniform rate for processes of a like nature and responsibility. Thus writs of execution against persons and effects have been rated at Rs. 4, and simple processes, such as summons, subpœnas, &c., at Rs. 2. The time and labor bestowed in serving processes within the limits of Calcutta ought to be equal in suits of whatever value, there being only one uniform distance, *i.e.*, within the town limits in which the service is to be effected. The principle of a scale of fees graduated according to the value of suit has, therefore, not been followed, and it would indeed be inconsistent with the terms and spirit of Section 7 Act VIII. of 1852."

"IV. As regards advertisements and the expense of them, the Court, having communicated with the Judges of the Small Cause Court as to their practice, are of opinion that usually sales should be advertised in the verandah of the Supreme Court, as this course would attract a sufficient number of bidders to guard against the possibility of the property under seizure being sacrificed; but the sale of all property above the estimated value of Rs. 500 and not

Advertisements. Manner of advertising and mode of dealing with the charges.

* *Plus* 6 annas on account of the Sheriff's native officer. *Vide* High Court's Circular Memo. No. 4, dated 16th February, 1872.

exceeding Rs. 1,000 should be advertised *once* in the *Exchange Gazette*, while for *property* estimated to be above Rs. 1,000 in value, five advertisements should be allowed. The charges for these advertisements, which Act VIII. directs, shall be deemed costs of suit, should be reimbursed in the first place to the Sheriff out of the proceeds of sale, and then when he renders the account to the Judge or other officer directing the sale, they should be charged to the judgment-debtor; any party desiring a more expensive form or a greater number of advertisements, should pay himself for such extra charges, and the Sheriff might have authority to resort to such special mode of advertisement on the amount of extra charge being first deposited with him."

Extract (paragraphs 2 and 4) from a letter from the Officiating Under-Secretary to the Government of Bengal to the Register of the Sudder Dewany Adawlut, No. 2110, dated 27th September, 1852.

Sanction to proposed scale and Sheriff's poundage.

3. "II. In reply I am desired to inform the Court that his Lordship has been pleased to sanction the adoption from and after the 1st November next inclusive of the scale of fees proposed, as it appears to be moderate and at the same time sufficient, together with the poundage of 2½ per cent. on sale proceeds to remunerate the Sheriff for his trouble."

Approval of suggestions as to advertisements.

"IV. The Court's suggestion, in regard to advertising the sale of property seized in execution of decrees, has also met with his Lordship's approval, *viz.*, that property valued at less than Rs. 500 be advertised at once, and that property valued at above Rs. 1,000 be advertised five times in the *Exchange Gazette*. This part of the plan will also have effect from and after the 1st November."

4. With the sanction of the Government, in reference to Act VIII. of 1852, circulates for general information to the civil and criminal authorities in the Western Provinces, the same scale of fees on account of the execution by the Sheriff of Calcutta of legal processes issued by any Court, Judge, or Magistrate in the North-Western Provinces.

Circular Order No. 8.
Dated 30th March, 1858.
Fees for processes from the N.-W. Provinces executed in Calcutta.

FINES.

Requests that Zillah Judges will adopt in their Courts, and cause to be introduced into the subordinate Courts, the form of register of fines prescribed by the Circular Order No. 4 of the 5th January last* on the Criminal Side of the Court.

Circular Order No. 6.
Dated 6th April, (L.P.) } 1838.
„ *8th May,* (W.P.) }
Form of register of fines.

2. The object of the Court in prescribing the use of this form is to provide against the misappropriation on the part of any of the ministerial officers of district Courts of moneys paid into Court, but it is not intended to prevent the adoption of any additional checks which the Judges may consider necessary.

Object of the form.

3. The Court request that due attention be paid to the entry in the register of all fines immediately they are imposed to the issuing of *perwanahs* to the Nazir, to realise the amount of such fines, and to the examination of the register at the commencement of every month by the Head Clerk *Sherishtadar, Nazir, and Treasurer* of your Court.

Entry of fines, issue of *perwanahs*, and examination of register.

* The Circular was issued by the Western Court under date the 15th December, 1837. It is not reproduced here because it belongs to the Nizamut side.

FLY-LEAF.

Circular Order No. 186.
Dated 24th October, 1861.
Fly-leaf revived for record of pending suits.

It has been represented to the Court that owing to the fly-leaf that used to be attached to the record of pending suits having been discontinued,* some inconvenience has, in one or two instances, been experienced when it has been alleged that documents were missing from a record, there being no means of knowing whether they ever were actually placed with it or not, therefore, forwards for general adoption in the Civil Courts of each district, the accompanying form of fly-leaf (which is to be used either in English or vernacular according to circumstances) together with an extract † from the Judge of Nuddea, conveying suggestions as to the use that should be made of it.

† Para. 4.

Zillah
Court of the Moonsiff of
List of the papers of case No. of 186 .
Execution of decree file
Ram Chunder Doss, Plaintiff, *Ahmud Ali and others*, Defendants,
or or
Petitioner Opposite party.

No.	Nature of Paper.	Date of filing.	Remarks.
1	Application to execute ...	21st March, 1861	.....
2	Decree of this Court, dated 29th December, 1861...	...	Returned 18th July, 1861.
3	Petition of Ahmud Ali objecting	1st April ...	.....
4	Receipt in full, dated 5th January, 1861 ...	...	Penalty of Rs. 23 paid herewith.

* *Vide* Circular No. 170, dated 4th September, 1860.

Extract paragraph 4 from a letter from the Judge of Nuddea No. 277, dated 24th September, 1861.

4. I would suggest the adoption of a printed or lithographed form with which every Court should be provided in amply sufficient numbers; an example of such a form is annexed. It should be the duty of the Sheristadar on the very institution of a suit to cause the heading of such a form to be filled up and to place it at once with the plaint, and lay it before the presiding Judge for his signature, and the officer in charge of the suits should enter in this index leaf each paper as it is filed, or ordered to be filed with the nuthee, marking in such paper its corresponding number.

When and how to be filled up.

FORMS OF ADDRESS.

Circular Order No. 9. Dated 6th July, 1838.
Forms of address in corresponding with Native Judges.

The Government having been pleased to approve of an alteration of the forms of address to be used in communications addressed to the Principal *Sudder Ameens* by the Court request that the following forms be observed in future by all public functionaries having occasion to correspond with the Native Judges :—

PRINCIPAL SUDDER AMEENS.*

	Form of Address.	*Title.*
Christien	... Sir	... Esquire.
Mahomedan	..	خان بہادر معالی منزلت سلمہ اللہ تعالی
Hindoo	ایضا	رای بہادر

MOONSIFFS.

	Form of Address.	*Title.*
Christian	... Sir	... Mr.
Mahomedan	... بعافیت باشند	دیانت و امانت پناہ
Hindoo	ایضا	ایضا

* Now Subordinate Judge.

FUNDS.

Under instructions from the Government, the Court notify to the civil and ciminal authorities in the Lower and Western Provinces for general information, that the Honorable the Court of Directors have prohibited the creation and maintenance of unauthorized funds in the public offices, through the means of fines, or from deductions made from the pay of establishments, and have directed that sums thus accruing shall be carried to the credit of Government.

Circular Order No. 157.
Dated 6*th August,* (*L. P.*)
Ditto 8*th October,* (*W. P.*) 1841.
Funds not to be made from fines and deductions of pay.

FURNITURE.

His Honor the Lieutenant-Governor of Bengal having, in the course of his tours, noticed the want of proper accommodation and furniture in the Courts of Moonsiffs and Sudder Ameens and of sufficient attempt to provide for an appearance of official decorum in the arrangement of the cutcherries, has directed the Court to authorise Zillah Judges in future to pass in their contingent bills, charges requisite to provide each Moonsiff's Court with a table and one or two chairs and benches, a raised platform, and rail (if suitable) and a book case, and to request that they will see that these are properly taken care of.

Circular Order No. 92.
Dated 15*th January,* 1857.

Zillah Judges to pass, in their contingent bills, charges for furniture for Moonsiff's Courts.

GAZETTES.

The Court annex for the information of Zillah Judges an extract (paragraph 3) of a letter from the Officiating Judge of Saharunpore, dated the 4th instant, No. 104, and enjoin upon them the strict and punctual

Circular Order No. 99.
Dated 17*th June,* 1845.
Gazettes to be regularly filed and bound into annual volumes.

observance of the plan therein described. It is essential to the maintenance of uniform practice in the Subordinate Civil Courts that the *Gazettes*, in which the Circular Orders issued for their guidance appear, should be regularly filed and carefully bound into annual volumes; and it is hoped that the rule now prescribed will suffice to secure this desirable object.

Subordinate judicial officers to be held personally answerable for their preservation.

2. Zillah Judges will be pleased to inform the judicial officers subordinate to their authority, that they will be held personally answerable for the preservation of the official *Gazettes* supplied by Government for their use, and that they will be required to replace those numbers of the *Gazette* which may be found, on examination at the end of each year, to have been injured, defaced, or mislaid.

Gazettes to be acknowledged monthly and sent in to Zillah Judge for inspection annually

Para. 3. "I am induced to think that the Agra *Government Gazettes*,* in which these Circular Orders appear, are very irregularly kept and filed by the *Moonsiffs*, and propose to require an acknowledgment in future at the expiration of each month that the *Gazettes* forwarded to have reached them, and in future at the expiration of the year to require (as is usual with *tehseeldars*) that they be sent in to me for inspection; that the file is complete, and that they have been properly bound and kept, and have called for those of previous years to ascertain this point.

GOVERNMENT SERVANTS.

Circular Order No. 106.
Dated 22nd November, 1850.
Men dismissed for misconduct not to be re-employed.

In pursuance of the orders of Government contained in the letter from the Under-Secretary to Government, dated 25th ultimo, No. 1553, the Court publish for general information the

* Corresponding to the *Government Gazette* in Bengal which appears in the Bengali and English languages and to the Oordoo *Gazette*, which is supplied to the Behar Courts. The High Court's Circulars, however, now appear also in the *Calcutta Gazette*.

following extract from a Despatch from the Honorable the Court of Directors, No. 27 of the 10th July, 1850.

19. "We consider it so injurious to the service that men who have been dismissed for misconduct from one department, should be considered eligible for re-employment in any other department; that we must entirely discountenance such a practice. It is a wholesome check upon negligence and dishonesty for the servants of Government clearly to understand that probity and diligence are the only means of retaining employment under Government."

Circular Order No. 159.
Dated 17*th December*, 1851.
Foregoing rule not to apply to servants displaced on account of inaptitude for some particular branch of occupation.

2. The Court, under instructions from Government No. 1597, dated 21st October last, directs me to inform you that the rule laid down by the Honorable the Court of Directors in their Despatch, No. 27 of the 10th July, 1850, an extract from which was circulated with their Circular letter No. 23 (106 published series) of the 22nd November following, was not intended to apply to cases of inaptitude for some particular branch of occupation to which a native servant may have been originally appointed and from which it may have been necessary on that account only to displace him.

Circular Order No. 157.
Dated 22*nd April*, 1860.

3. The following order of Government is forwarded for information and guidance:—

[No. 309, dated 22nd March, 1860 from the Government of Bengal gave cover to an Order No. 278, dated 6th February, 1860 from the Home Department which communicated a Circular of the Government of India of the same date to the following effect:]

Government servants in prison to be considered under suspension without pay.

"I am directed to transmit for information and guidance the following extract from the 9th paragraph of a Despatch from the Right Honorable the Secretary of State No. 80 of 1859, dated the 22nd December."

" When a servant of Government is committed to prison either for debt or on a criminal charge, he should be considered as under suspension from the date of his arrest, and not allowed to draw any pay until the termination of the proceedings against him ; when an adjustment of his allowance will be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame, or (if the imprisonment was for debt) of its being proved that the officer's liabilities arose from circumstances beyond his control."

GROUND-RENT
FOR MOONSIFFS' CUTCHERRIES.

Circular Order No. 161.
Dated 19*th December*, 1851.
Ground-rent for Moonsiffs' cutcherries, how to be defrayed and charged

In pursuance of the orders of Government No. 2565 of the 16th instant, the Court direct me to notify that any rent which may have to be paid for the ground occupied by *Moonsiff's cutcherries*, will be paid by Government as a separate item, to be entered by the Judges and others in their contingent bills, and is not to be defrayed from the allowance granted to *Moonsiffs* for stationery and establishment.

Circular Order No. 87.
Dated 20*th October*, 1856.
Attention drawn to foregoing requisition.

I am directed by the Court to request your particular attention to the requisition contained in their Circular Order No. 161, dated the 19th December, 1851 published at page 66 of the Bengali *Gazette*, dated the 27th January, 1852, the provisions of which have been frequently disregarded in some districts, and much inconvenience has ensued in consequence to this Court.

HEAD CLERKS.

The Court publish the following rule determined on by the Courts of Sudder Dewany and Nizamut Adawlut of the Lower and Western Provinces in concert with the sanction of Government, for devolving on the Head Clerk of the Zillah Judge's establishment certain unimportant duties hitherto performed by the Judge, with a view to the relief of the latter officer.

Circular Order No. 165.
Dated 25th August, 1841.
Duties assigned to Head Clerk for relief of Zillah Judge.

2. The Judges are empowered at their discretion to employ their Head Clerk in the following duties.

Attesting copies of decrees and other documents granted to parties on stamped or plain paper under the Judge's orders; attesting copies of proceedings sent to the local authorities and to other districts under the Judge's orders; registering in English the mookhtearnamahs, and preparing them for the Judge's attestation.

3. As a needful precaution against error and abuse, it is at the same time ordered that the Head Clerk, when entrusted with such duties at the discretion of the Judge, is never to attach his signature to any document without its correctness having been previouly attested and certified by the head ministerial native officer of the Judge's Court.

Head Clerk not to sign any document unless Sheristadar certifies its correctness.

HEATHEN DEITIES.

The Court having observed in various instances that the proceedings and orders of the different Courts of justice are headed with the names of the heathen deities, request the several civil and criminal authorities in the Lower Provinces

Circular Order No. 173.
Dated 3rd December, 1841.
Names of heathen deities not to head any orders or processes of Courts.

that such practice may be discontinued in all orders of the Courts, and processes emanating therefrom.

This order not to apply to papers presented to the Courts.

2. At the same time, the Court observe that the above order has no reference whatever to petitions, documents, or papers of any kind which may be presented to the Courts, in regard to which the authorities will be careful to abstain from all interference.

INTESTATES.

Circular Order No. 219.
Dated 1st December, W.P
„ *15th December, L.P.* } 1837.
Instructions as to "lawaris" property.

It having been brought to the notice of the Court that considerable difference of opinion and practice prevails as to the manner of disposing of "lawaris" property, they communicate to the civil and criminal authorities subordinate to them the following observations on the subject:

Not to be confounded with unclaimed property.

2. The Court observe that the difficulty appears to arise from the Magistrates confounding "unclaimed property" with "the property of persons dying intestate" (lawaris.) With regard to the former, I am directed to refer you to Clause 16 Section 16 * Regulation XX. of 1817, which expressly declares that it shall be considered the property of Government; and that whatever property of that description may come into the hands of the *darogahs* of Police, shall be forwarded to the Magistrate of the district. As respects such property, therefore, the disposal of it clearly rests with the Magistrate subject, of course, to the control of the Commissioner and Government, without any interference on the part of the Civil Court.

* Repealed by Act XVII. of 1862 Re-enacted in Criminal Procedure Amendment Act of 1869, Sections 130 to 132. See also Act X. of 1872, Chapter XXX. especially Sections 416 to 418.

3. With regard to the custody and disposal, on the other hand, of the property of persons dying intestate (*lawaris*), the Court observe that Section 7 * Regulation V. of 1799, Bengal Code, contains a specific provision, and declares that should no claim be preferred to it for the space of twelve months, an inventory of the property, together with a report of the circumstances of the case, should be submitted by the Judge to the Governor-General in Council for his orders. Whenever, therefore, any property of that description may come into the hands of a Magistrate, he should forward it immediately to the Judge of the district, to be dealt with in the manner directed in the Section of the Regulation above quoted.

Rule as to custody and disposal of lawaris property.

4. The Court direct in pursuance of instructions from the Government, that in lieu of a separate inventory, in each instance, of property of intestates unclaimed upwards of twelve months, the Judge will in future submit to the Government, at the close of every year, a general statement of all property of the kind which may be in his custody for a period exceeding twelve months after the issue of notice for the appearance of heirs or claimants.

Circular Order No. 74.
Dated 3*rd January*, 1851.
Instead of an inventory in each case, a general statement to be annually submitted to Government.

5. To remove doubts regarding the disposal of claims of creditors on the property of persons who die intestate, no heirs being forthcoming, the Court are pleased to declare that no suit can be instituted for the establishment of such claims before the expiration of the twelve months specified in Section 7 Regulation V. of 1799, and Clause 7 Section 16 Regulation III. of 1803,

Circular Order No. 80.
Dated 14*th February*, 1845.
Claims of creditors on "lawaris" property. Suits not to be instituted before expiration of 12 months.

* Modified by Section 6 Regulation XV. of 1806, which Regulation has been repealed by Act XVII. of 1862.

since before that period, the service of the notice required by Section 2 Regulation II. of * 1806, is impracticable.

Claims preferred within that time how to be dealt with.

6. Any claims on such property which may be preferred to the Judge within the limited time, should, in the event of the property being carried to the credit of Government at its close, be reported to the Government for its orders. Should the claims be rejected, the claimants will be at liberty to bring a regular suit against the Government in the Courts of justice.

Circular Order No. 128.
Dated 16th May, 1846.
Expense of conveying intestate property to sudder station.

7. The practice which obtains in certain districts for the Nazir to pay for the conveyance of intestate property to the sudder station from any ready money that is received as part of such property, or when there happens to be no ready money from any other funds in his charge, being objectionable, the Court direct with the sanction of Government that the Judge will in future pay such expenses from his treasury, and charge the same in his contingent bill, subject to re-imbursement from the eventual proceeds of the sale of the property, or, in cases where a claim to heirship is established, either by payment by the heir before the property is delivered to him, or by the sale of such portion of the property as may cover the expense.

ISSUES.

Circular Order No. 68.
Dated 9th July, 1855.
Drawing up of issues.

Circular Order No. 92, dated 8th May, 1850.
Circular Order No 154, dated 20th November, 1851.
Circular Order No. 19, dated 26th August, 1853.

The Court regret to find that sufficient attention has not been paid to the instructions laid down in their Circular Orders noted in the margin, for the drawing up of issues in original suits and appeals.

2. The Court publish herewith for general guidance extract pages

* Repealed by Act X. of 1861.

Examples and errors.

245 to 252 of Mr. Macpherson's work on Civil Procedure, which contains several clear and explicit examples of the manner in which the issues in a suit are to be drawn, and an abstract of many of the decisions of the Court in cases in which issues have been erroneously drawn.

Irrelevant issues.

3. The Court regret to observe that too frequently the lower Courts, instead of raising as issues merely the points to be determined, record issues upon the facts which are themselves the evidence of the points to be determined. They have recently had occasion to notice a case where, in a simple action on a promissory note, the authenticity of which was denied by the defendants, the Judge raised nine irrelevant issues, having done which, he omitted to pronounce a decision on any of them.

Issue in bar when to be disposed of.

4. As it appears that an erroneous opinion prevails that Circular Order No. 33 of 13th September, 1843, * has been superseded by Circular Order No. 92 of 8th May, 1850, the Court take this opportunity of correcting that error. Where an issue in bar is raised, there may be cases where it is possible to dispose of it at the time of drawing the Section 10 proceeding, † when if the decision is unfavorable to the plaintiff, the case will come to an end, and the decision will be at once recorded.

Evidence in regard to it, how and when to be taken.

5. If, however, the issue in bar is of such a nature, that it is necessary to take evidence regarding it, the Court will complete its Section 10 roobokaree adding any other issues of fact

* In that Circular Order the Court desire that "the judicial officers will strictly confine themselves to the adjudication of the point or points at issue between the parties as set forth by themselves, and that they will bear in mind that they have no authority to declare judicially that one or other party is entitled to bring his suit *de novo*, or to point out the form in which it should be revived."

† Section 10 (Regulation XXVI. of 1814) was repealed by Act X. of 1861; the settlement of issues being now regulated by Sections 139 to 141 of the C. P. C. (VIII. of 1859).

or of law that may arise; but in the proceeding under Section 12, it will direct the parties *first to produce only the evidence affecting the issue in bar*, after hearing which a further day can be fixed, if necessary, for taking the evidence to the issues of fact.

6. The Court hope that, by the adoption of this system, much trouble may be saved to the lower Courts, and expense avoided by the suitors.

Extract from Mr. Macpherson's work on Civil Procedure.

CHAPTER XIX.

Practical application.

"To apply this form practically: Where A, a Hindoo, sues B, for the possession of land, alleging that Z being proprietor of the land, died, leaving A his only child and heir. B replies that Z was not; that Z was not proprietor at the time of his death; that A was born blind, and therefore incapable according to Hindoo law of inheriting the land, even if it had belonged to Z at the time of his death. A denies that he was born blind, and insists that even if he had been so, he would not have been incapable of inheriting.

The material issue of fact averred by the plaintiff and denied by the defendant is whether Q was at his death proprietor of the land.

The material issue of fact averred by the defendant and denied by the plaintiff is whether A was born blind.

The material issue of law (which arises if it be found that Q was proprietor, and that A born blind), is—

Whether a person born blind is incapable by Hindoo law of inheriting the land in question.

Again, A sues B for the possession of land, alleging that C, being in possession as widow, heiress, and representative of a

Hindoo proprietor, did for a purpose specified in the plaint grant to D a mortgage of the land with power of private sale and that D sold the land to A under that power.

The defendant denies that C was the widow of the deceased proprietor; he denies that she executed the instrument in question; he insists that a power of sale, such as that which plaintiff sets up, is contrary to the Regulations, and insists that even if C had been the widow of the proprietor, and had executed the instrument, and if the power had not been contrary to the Regulations, still C, as widow and representative, was not entitled by Hindoo law to mortgage the property for the purposes specified in the plaint.

Here the material issues of fact averred by the plaintiff, and denied by the defendant are—

1. Whether C was the widow of the proprietor.
2. Whether she executed the instrument in question.

No material issue of fact is averred by the defendant and denied by the plaintiff. The material issues of law (which arise if the issues of fact are found affirmatively) are—

1. Whether the power of sale is allowed by law.
2. Whether C, as a Hindoo widow, was entitled to mortgage the estate for the purpose specified.

No material issue of fact to be excluded.

The Judge must be careful to exclude no material issue of fact raised by the pleadings on either side, and previously to rejecting evidence to any point as unnecessary; he ought to consider whether or not it is probable that such evidence, although not deemed requisite for his own satisfaction, may be so deemed by the Court before whom the case may be brought on appeal.

* * * * *

Excuse for neglecting to file evidence where issues have been fixed.

No party is allowed to plead as an excuse for neglecting to file evidence that the Court did not specifically call for it; provided

the Court has fixed issues under which the evidence might with propriety have been tendered.

* * * * * * * *

Judicial officers not to take cognizance of extraneous matters, but to confine themselves to the adjudication of the points at issue.

Judicial officers of every class are positively prohibited from taking cognizance of matters not set forth in the pleadings and more especially from giving directions to one or both of the litigants to re-institute proceedings after a particular manner, to include other persons in the suit and the like, and are required to confine themselves to the adjudication of the point or points at issue between the parties as set forth by themselves. They have no authority to declare judicially that either party is entitled to bring his suit anew, or to point out the form in which it should be revived.

Facts stated and not denied are not facts in issue.

Facts stated in the pleadings on either side, and not distinctly denied in the adverse pleadings, are not considered to be facts in issue, nor facts as to which issue are to be laid down and proofs taken.

But the denial may be positive and distinct, though general in its terms, or it may be consistent in a reference to a former pleading as having already stated the truth, and in such cases, the matter is in issue.

No evidence admissible except on the points in issue.

No evidence is admissible except upon the points in issue: Therefore in an action for recovery of a debt secured by bond, where the defendant denies the execution of the bond, and the issue is whether it be the defendant's deed or not, he cannot give a release of this bond in evidence, for that does not destroy the bond, but shows only that it is discharged, and therefore does not support his side of the issue.

The duty of selecting the points of issue is one for the discharge of which no rules can be laid down. Every man will select the points which appear to him most material, and their materiality will appear in various lights to different minds, and perhaps even to the same mind at different stages of the enquiry. In order to meet this change of view, if the points originally fixed upon, do not appear to be sufficient for the final determination of the matters in dispute; and if proofs shall be required on any other points in the course of the trial, such additional points are distinctly recorded from time to time on the proceedings, and the proper party is called upon for the requisite evidence, and no exhibit is allowed to be filed, or witness summoned unless expressly in proof or refutation of some point, upon which the Court may have directed that evidence should be taken.

No rules for selecting points of issue. Additional points recorded from time to time. Exhibits and witnesses must have relation to some such point.

The proceedings thereupon are, of course, similar to those which accompany the original selection of issues.

It may perhaps not be wholly unprofitable to notice a few of the cases, in which the lower Courts have been held on appeal to have miscarried in their selection of issues.

Cases noticed of miscarriage in selection.

Land was sold by public sale to A as the lakhraj land of B, C having interfered, A sued C for possession. C replied that the land was not lakhraj, but was subject to the payment of rent to him.

Here it is evident that C's allegation, if true, affords no answer to A's demand of possession. It is, therefore, erroneous to take issue upon the question, whether the land be or be not of rent-free tenure. The point to be decided is whether this is the same land which has been sold to A. If it is, A is

entitled to be put in the same plight that B was in before the sale. If B wrongfully held the land rent-free, A can be sued in the usual way, as B might have been by the person seeking to subject the land to the payment of rent.

If the plaintiff alleges a right on his own part, and the defendant, admitting the right, pleads that it was relinquished in his favour by the plaintiff himself; the question is whether there has been such relinquishment, and not whether the right which both parties admit is well founded.

Where a man claims lands, because they are included in a lease to him, the question is whether those very lands are or not comprised in his lease, and not whether he has more land in his possession than is mentioned in his lease.

If a man sue for the value of his crops forcibly cut and carried off by the defendants, it is enough for him to show that the crops were his; that they were illegally carried off, and that the defendants were concerned in the aggression, and it is unnecessary for him to prove by what title he holds the lands, or to show what quantity was cut and in what manner carried off by each individual.

So if the plaintiff sues for damages for injury.

So if the plaintiff sues for damages for injury done to his crops by a certain proceeding of the defendant, which caused them to be inundated, the question of damages is the question to be decided, and it is erroneous if the Court, without pronouncing any opinion upon that point, states in its decree that the real question at issue is a boundary dispute, and refers the plaintiff to an action to settle the boundary.

Where the ground of complaint is that the defendant has encroached upon the public road by the erection of a wall, the only issue is one of fact, *viz.*, whether the wall stands upon what was previously the public road. It is erroneous to decide the

cause upon such grounds as these, that the road now existing is broader than an adjoining road, or that the wall complained of does not obstruct the free passage of men and beasts.

Where documents, which form the foundation of the claim of one party, are alleged by the opposite party to have been executed in furtherance of a fraudulent purpose; the honesty or dishonesty of the transaction is the point in issue, and it is erroneous to decide in favor of the claimant merely upon proof of the execution of the deeds.

In a suit to assess rent, where the defendant alleges that his tenure is exempt from assessment as having been held rent-free from a period previous to the 12th August, 1765, the date of the Company's accession to the Dewany; the question in the cause is whether the land has been held rent-free during the period alleged, and it is error if this be not fixed as an issue. Where a suit is brought to assess rent at the current rate of the Pergunnah, the question is what are the present rates of the Pergunnah for lands of the like quality to those in suit, where a man sues to recover money advanced by him to the defendant on security of a lease of lands under which he has himself been in possession, and the defence is that he has been re-imbursed by the profits of land during his occupancy. This plea must be enquired into, and it is erroneous to decree for the plaintiff, and to leave the defendant to establish his set off in a cross suit.

In distinguishing the real points in issue and in deciding upon them, a close attention to the pleadings will generaly guide the Court safely, and most of the miscarriages in this respect seem attributable to the want of an attentive analysis of the conflicting allegations, although the Judge is not at liberty either to prescribe or to suggest to the parties the particular evidence by which they are to substantiate their allegations; it is yet considered to be his duty to take a more active part in the investigation than usually falls to the lot of Judges in other

countries, and indeed a case will be remanded by the Appellate Court, if it does not appear by the proceedings that the Judge has resorted to all reasonable means of informing himself of the truth.

If, for instance, the case turns upon the question, whether the surrender of a lease was completed according to the usual practice in such cases, or whether a lease be genuine, or whether a defendant has been adopted into another family, and has thus ceased to be responsible for his fathers' debts, or upon the value of certain articles at a particular place and time: in such cases the Judge is himself to state minutely the points on which he requires evidence to be adduced, and the public records, if any, which he requires to be searched: and he is responsible for the incompleteness of the investigation, unless where he has thus called for evidence, and the parties have failed to produce it—for the parties cannot adduce evidence on any point not laid down in the proceeding of the Court.

Wherever anything appears on the face of the proceedings which naturally and obviously suggests inquiry, such as an admission of the existence of a document, which, if produced, might throw light upon the merits of the case, it is the duty of the Court itself to enquire further.

JUDGES.

Para. 9.—Circular Order No. 28
Dated L.P., 7th December, 1838.
W P., 21st December, 1838.
On delivering over charge of their offices, Judges are required to record their own opinion of the subordinate judicial officers.

Considerable inconvenience having been experienced in preparing the Annual Reports from the want of detailed information regarding the general character and qualifications of the native Judges, arising in some instances, from the district Judges being absent from the station, and in others

from their absence from the country at the period of the transmission of the annual statements, the Zillah and City Judges are required, in order to guard against this want of information, on delivering over charge of their offices to record a minute, containing their opinion of the subordinate judicial officers (Principal and other *Sudder Ameens and Moonsiffs*,) for the use of their successors, and eventually for the information of the Court and of Government.

Circular Order No. 190.
Dated 17th February, 1862.
Attention of Judges drawn to explanations as to pending cases.

2. In circulating for the information of District Judges and their subordinates, the accompanying extract from a letter from the Secretary to the Government of Bengal, No. 129A of the 20th ultimo, draws attention to the explanations submitted in their monthly * civil statement regarding cases pending beyond the periods prescribed for their decision.

Non-arrival of day of hearing, not a satisfactory explanation of delay.

3. District Judges will observe that it is the intention of Government in no case to receive as satisfactory explanation for such delay that "the date fixed for hearing has not arrived," unless the officer concerned can show that his out-turn of decided cases is much above the average; that the number of institutions have been extraordinarily large; and that he has, in the manner prescribed by the concluding paragraph of the Government letter, applied for extra assistance for speedily disposing of his arrears of work.

Applications for extra assistance in disposing of arrears, to be scrutinized by Judge who will add his own remarks.

4. The Court look to the Judge as the head of the civil administration of a district, to subject to thorough investigation and scrutiny, all such applications before forwarding them for

* Made *quarterly* statements by High Court's C. O. No. 26, dated 11th September, 1867. See also C. O. No. 31, dated 4th November, 1870.

submission to Government, and in every case to add his own remarks as to the necessity for making such application and the reason for granting the assistance solicited, as it must be distinctly understood that neither the Court nor Government will attend to such calls unless real necessity, not attributable to the indolence or incapacity of the applying officer, be shewn.

Vague nature of explanations for delay.

5. Further draws attention to the vague nature of the explanations for delay in the decision of cases as entered in his monthly* civil statements.

Should be full. What points to be specified. Judge's responsibility in the matter.

6. The Court expect that in future the Judge will be careful to submit, on the part of himself and his subordinates, the fullest explanations in every case in which such is necessary. It should be invariably specified on what date the case was last taken up and the order then passed, and similarly in cases referred to arbitration or local enquiry, the date fixed for the submission of the award or report. Further, the Court expect that, in submitting these explanations, the Judge should offer his own remarks as to their sufficiency, for the Court wish to impress upon him that any explanation which has passed him without comment, and is afterwards deemed unsatisfactory, cannot be considered, but as a reflection on the supervision which it is his duty to exercise over him subordinates.

EXTRACT.

"With regard to those judicial officers who have fixed the days for hearing several Small Cause Court cases, instituted in September at three, four, and even five months' distance, I am desired to observe that, in the opinion of the Lieutenant-Governor, the necessity for an early decision in all cases of this particular description, is a matter of such great importance, that nothing should be left undone to introduce a better system by which this object could be accomplished, and that

* Made *quarterly* statements by High Court's C. O. No. 26, dated 11th September, 1867. See also C. O. No. 31, dated 4th November, 1870.

if the Sudder Court think it expedient to make an example of those officers who are most blameable for fixing these remote dates for trial, such a measure would be fully supported by Government.

"All officers would be warned of the serious consequences that will follow any culpable delay in the disposal of these cases, and whenever their file is too heavy to permit them to fix a date for hearing any Small Cause Court case, within a period of six weeks, they should represent the matter to the Judge of the district. The Judge will then enquire into the matter, and on satisfying himself that the case is as represented to him, and that notwithstanding every exertion on the part of the local Judge, cases must stand over the above prescribed limit, he should make a statement of the circumstances to the Sudder Court, with a view to an application being made by them to Government, for such additional judicial power as may appear necessary."

Circular Order No. 154.
Dated 25th September, 1835,
L. P. and W. P.
Judges, &c., to furnish their successors with lists of unanswered letters and of periodical statements over-due.

7. It having occasionally been pleaded by civil functionaries, who have recently joined their offices, in answer to calls by the Court for replies to letters and for periodical statements over-due, that not having had time to look into their records, they were not aware that the replies or statements had not been sent, the Court have been pleased to resolve that all Judges, Commissioners, Magistrates, and Joint-Magistrates, on delivering over charge of their offices, shall furnish the officer who relieves them, with a list of all unanswered letters and of all periodical reports and statements which, having become due, have not been forwarded to this Court.

JUDGMENTS.

Circular Order No 10.
Dated 4th April, 1853.
Zillah Judges to watch the manner in which cases are taken up and decided in subordinate Courts.

Forwards to Zillah Judges for their information the accompanying extracts, paragraphs 8 and 19, from a letter from the Judge of Backergunge No. 16, dated the 24th ultimo, and requests that, with reference to the statements there made, they will keep a watch over the manner in which cases are taken up and decided in all the subordinate Courts in their district.

2nd.—The ordinary rule should certainly be that the decision on one case should be delivered before another case is taken up, and further that except in occasional instances of special intricacy or difficulty, the decision should be at once written on the bench* after the close of the argument by the pleaders.

Ordinarily the decision in one case should be delivered before another is taken up, and should be written at once on the bench after the close of the argument.

Extracts paragraphs 8 and 19 from a letter from the Officiating Judge of Backergunge No. 16, dated the 24th March, 1853 :

Para. 8.—The mode of conducting business with the Moonsiff to which I have made allusion above, is that all the early part of the month is devoted to reading through the cases and preparing materials for a judgment, and the latter part is occupied in concocting the judgments. Thus I found that the Moonsiff of Cowkallee had not decided a single case during the month up to the 18th March.

Para. 19.—I explained to the Moonsiff how objectionable his practice was of hearing 10 or 12 cases at a time and writing his judgments upon them at his leisure, and I instructed him to observe in future that, except in any special cases, when he was in doubt as to law, or when he wanted to search for precedents, he was never to hear a second suit till he had written his judgment in the first. I also intructed him to pay particular regard to that wholesome rule which prescribes that cases shall be taken up and decided if capable of decision according to their number on the file, for if I am rightly informed, Moonsiffs are more apt to take up easy cases out of their turn than do their best to ripen for a hearing the suits thereat of a more intricate nature.

JUDICIAL OFFI ERS.

By the Circular Order No. 24, dated 31st December, 1830, Sudder Ameens were prohibited from appointing their own connections to situations in their own establishment.

Circular Order No. 61.
Dated 9th March, 1855.
Appointment of connections prohibited.

* See Sections 183 and 185 Act VIII. of 1859.

2. By the Circular Order No. 71, dated 8th June, 1849, the Court required all Moonsiffs, Sudder Ameens,* Principal Sudder Ameens, in reporting to the Judge any new appointment on their establishment to state whether the person appointed is any and what relation to the nominating officer.

Report as to relationship or otherwise of new appointee to nominating officer.

3. The Court are now pleased to direct that in future no person shall be appointed to any situation in the establishment of any Principal Sudder Ameen, Sudder Ameen, or Moonsiff, who is in any way connected with the nominating officer. It will be the duty of the Zillah Judges to see that this rule (which does not affect persons already appointed) is strictly adhered to in future.

No person to be appointed on the establishment of P. S A., S. A., or M., who is in any way connected with the nominating officer.

4. Forwards to civil and criminal authorities, for their information and for communication to the Uncovenanted judicial officers subordinate to them, the annexed extract paragraph 75 from a Despatch No. 1 from the Honorable the Court of Directors, dated the 15th January last.

Circular Order No. 89.
Dated 25th April, 1845.

"We have repeatedly informed you that we cannot sanction any departure from the established rule,† that no officer in our service can be permitted to hold lands in any district in which he exercises civil authority."

No officer to hold lands in a district in which he exercises civil authority.

5. The Courts of Sudder Dewany Adawlut are pleased to publish for the information and guidance of the Zillah and City Judges and their judicial subordinates an extract

Circular Order No. 93.
Dated 29th April, (*W.P.*) } 1845.
Dated 5th September, (*L P.*) }
Holding land in their own districts, or speculating therein forbidden to civil authorities.

* The office of Sudder Ameen ceased to exist under the operation of Act XVI. of 1868.

† *Vide* High Court's C. O. No. 11, dated 12th June, 1865.

(paragraph 53) of a Despatch from the Honorable the Court of Directors No. 2 of 1842, dated 23rd February, and to communicate the following instructions on the subject to which it relates.*

EXTRACT.

"We direct the invariable observance of the rule of the service, that no officer holding civil authority in a district, shall, directly or indirectly, be a holder of land, or be concerned in any description of speculation therein."

Rule not to apply to present incumbents already in possession of landed property, except in the cases specified.

6. The rule prescribed in the Despatch cited has not been hitherto enforced in the Judicial Department, and it might perhaps be deemed a measure of unnecessary severity to give it generally retrospective effect, without inquiring as to the circumstances, character, and conduct of the parties who might be effected thereby. With regard, therefore, to present incumbents in judicial office, who are already in possession of landed property, whether patrimonial, purchased, or otherwise acquired, it is not the desire or intention of the Court to exercise any interference, except where the extent of the property may be so considerable, as to give to the possessor a preponderating local influence, and induce him for the protection of his own best interests, to engage in undertakings, and become a party to speculations and transactions which may divert his attention from his official duties, and, at the same time, incapacitate him for their impartial and unbiassed fulfilment. In such cases, where the inconvenience and injury may be patent to common observation, it will be the duty of the Civil Judges to report the circumstances for the information of the Court, and for eventual submission for the orders of Government in regard to those functionaries, who are not subject to removal from office without the sanction of Government.

*See High Court's Circular Order No. 11, dated 12th June, 1865.

7. Further, as regards present incumbents, the Court are pleased with the sanction of Government to direct that the spirit of the rule prescribed by the Honorable the Court of Directors shall be observed, and that the future acquisition by those parties of landed property by purchase, or other means such as form, gift, or mortgage, and speculations of every description therein within the limits of the district to which such parties, whether Principal Sudder Ameens, Sudder Ameens,* or Moonsiffs, may belong, shall be considered interdicted. It will be incumbent on the Civil Judges to bring to the immediate notice of the Court any contravention of this restrictive rule, which may come to their knowledge.

Present incumbents debarred future acquisition of landed property within their own districts.

8. In future, as a general rule, individuals possessing landed property, whether patrimonial purchased, or other, or being engaged in speculations therein, will be considered ineligible for appointment to judicial office within the limits of the district in which the said property may be situated; but the Civil Judges need not be thereby deterred from nominating such persons, whenever the extent of land may be so small as, in their estimation, to render the circumstance no objection to their employment in the district to which it appertains, a discretionary power to this extent having been reserved to the Sudder Dewany Adawlut in such cases.

Individuals possessing landed property ineligible to judicial office within the district where such property lies, except where it is so small as to be unobjectionable.

9. The Court are pleased to republish for general information the subjoined Notification of Government, dated 29th December, 1835, interdicting the engagement of the native Judges

Circular Order No. 206.
Dated 20*th June*, 1842, *(L. P. and W. P.)*
Trading speculations by native Judges and law officers interdicted.

* The office of Sudder Ameen ceased to exist under the operation of Act XVI. of 1868.

of all grades and of the law officers* of the Courts, in any trading speculations, and they request the Judges will direct to that order the particular attention of all the officers concerned.

NOTIFICATION.

Judicial and Revenue Department.

The 29th December, 1835.

The Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and the Mahomedan and Hindoo law officers of the Zillah and City Courts, and of the Sudder Dewany Adawlut under this Presidency, are hereby prohibited under pain of dismissal from office from being in any trading speculations.

If any Principal Sudder Ameen or other of the officers above-mentioned shall be now engaged in trading speculations, or any such speculation shall devolve on him by inheritance, it shall be incumbent on him, within one month, to make known the circumstance to the Zillah or City Judge, or to the Register of the Court of Sudder Dewany Adawlut, and terminate his connection with such transactions at the earliest practicable period. Should he be unable to do so within one year, he shall either resign his situation, or submit a report of the circumstances of the case to the Judge or Register, who will forward it to the Government or Court of Sudder Dewany Adawlut as the confirmation of the officer may be vested in one or other of those authorities, with his own opinion as to the propriety of allowing the officer a further period for the purpose of bringing his transactions to a close. If any of the officers above-mentioned shall fail to conform to the above rule, the same penalty shall attach to him as if he had engaged in trade subsequent to the publication of this order.

Candidates for any of the offices above-mentioned shall certify in their applications that they are not engaged in any trading speculations, and in the event of their being appointed, and of its being subsequently discovered that they were so engaged at the time of making their application, they shall be liable to be dismissed from office.

Circular Order No. 69.
Dated 25th October, 1844.
Lending money. Rule in Section 2 Regulation XXXVIII. of 1793 extended to all Uncovenanted judicial officers.

10. The Court are pleased to direct with the sanction of the Government that the rule † in Section 2 Regulation XXXVIII. of 1793 prohibiting public officers from lending money to persons

* No longer existent. See Act XI. of 1864.

†The words of the law are—"The Judges and Magistrates of the Zillah and City Courts, the Judges of the Provincial Courts of Appeal and the Courts of Circuit and the Registers to their respective Courts and their assistants, or other officers being Covenanted servants of the Company, and the Collectors of the revenue and their assistants are prohibited lending money directly or indirectly to any proprietor or farmer of land, or defendant talookdar, or under-farmer or ryot, or their sureties, and all such loans as have been made in opposition to the repeated prohibitions of Government, or which may be hereafter made, are declared not recoverable in any Court of judicature."

within their jurisdiction, be extended to all Uncovenanted judicial officers.

Circular Order No. 7.
Dated 3rd Ju'y, 1829.
Judicial officers not to transact public business in private dwellings.

11. Forwards for information and guidance of Provincial Courts of Appeal the accompanying extract (paragraph 17) from a letter from the Secretary to Government in the Judicial Department, dated the 16th ultimo, and requests that they will in conformity thereto prohibit in the strongest manner all judicial officers under their control from resorting to the practice referred to.

"The only point which requires particular notice adverted to in paragraph 23 of Judicial and Revenue officers transacting public business in their private dwellings. The Governor-General in Council entirely approves the intention of the Court to call the attention of the Commissioners of Circuit, and through them that of the Magistrates, to this subject. The prohibition should also extend to the Provincial and Zillah Judges, and be impressed upon the whole of the judicial officers in the strongest terms."

Circular Order No. 73.
Dated 6th March, 1840,
(L. P. & W. P.)
Application for promotion.

12. The rules published in the *Calcutta Gazette* of the 30th July, 1836 provide for the promotion of every class of native Judges according to their merits and qualifications. The Court have notwithstanding received numerous direct applications for promotion to vacancies, accompanied with original testimonials which required to be returned to the applicants. They have deemed it proper, therefore, to issue the following instructions which Zillah Judges are requested to communicate to the subordinate judicial officers of their district.

Record kept by Court of the past services, merits, and qualifications of judicial officers.

13. Under the rules laid down by the Government, a record is kept in this office of the past services, merits, and qualifications of the native judicial officers of every class, and the authorities in charge

of districts have been strictly enjoined to bring to the notice of the Court in their annual civil reports* the names of those officers, who have most exerted themselves within the year, and whose decisions and general conduct have proved most satisfactory. On the occurrence of a vacancy in any class of native Judges, the claims of every officer are taken into consideration, and arrangements made accordingly.

14. Although the observance of these rules renders it unnecessary for the native judicial officers to bring forward their claims individually, still it should be understood that every officer is entitled to make such representations, as he may think conducive to his interests, to the superior authorities; and it will be incumbent on the Zillah Judge to forward any representations of this nature, which those parties may desire to submit through the channel of his office for the information and consideration of the Sudder Court.

Every officer is nevertheless entitled to represent his own claims, and it is incumbent on Zillah Judges to forward such representations to the Court.

15. The Court are further pleased to resolve that similar indulgence should be intended to Moonsiffs and such other functionaries as may have lost their situations on the abolition of the old system, or on the reduction of temporary offices in which they may have been employed, and who may be desirous of stating their hopes or expectations to the Court.

Similar indulgence extended to Moonsiffs and others.

16. Any application, however, which may hereafter be forwarded by any native Judges direct to the Court will not be answered,† and no documents, which may be received with such applications, will be returned

Applications, forwarded by native Judges direct to the Court, will not be answered.

* A separate report is now required. *Vide* High Court's C. O. No. 4, dated 2nd February, 1871.

† Applied by High Court to applications for transfers. See C. O. No. 8, dated 26th July, 1869.

except upon the application of the party presented in the prescribed form and manner.

17. Under instructions from the Right Honorable the Governor of Bengal, the Court request that Zillah Judges will abstain from forwarding to Government representations from the Uncovenanted Judges, or officers attached to their Court, relating to their services, it being the wish of His Lordship that all persons desirous of bringing their claims permanently to the notice of Government, should do so themselves by the public post.

Circular Order No. 114.
Dated 30*th October*, 1840, *L. P.*
Zillah Judges not to forward to Government representations from Uncovenanted Judges and officers as to their claims.

18. Zillah Judges will not, of course, consider this order as rescinding the Circular Orders No. 215 of the 29th September, 1837* and No. 73 of the 6th March, 1840.†

19. The Court direct that whenever a Judge has occasion to convict an Uncovenanted judicial officer of any offence or irregularity, he shall record in a vernalar proceeding the exact charge which he considers to have been established, a copy of which shall be immediately furnished to the accused party.

Circular Order No. 113.
Dated 18*th December*, 1850.
Procedure when Uncovenanted judicial officer is convicted of an offence or irregularity.

JURISDICTION.

A reference having been made to the Court regarding the Appellate Jurisdiction of Zillah Judges under Act X. of 1859, ‡ when the territorial jurisdiction of the Civil and Revenue Courts of a district are not identical, states for the information and guidance of Zillah

Circular Order No. 204.
Dated 5th *May*, 1862.
Appellate Jurisdiction of a Zillah Judge under Act X. of 1859, identical with his Civil Jurisdiction.

* Not re-produced here, because it does not appear in the last authorized Edition.

† Vide preceding paras. 12 to 16.

‡ Inoperative in those districts to which Act VIII. of 1869, B. C., has been extended.

Judges that the Court has ruled that the Appellate Jurisdiction of a Zillah Judge under Act X. of 1859 is identical with that exercised by him as a Civil Judge. All appeals, therefore, that concern land situated within the jurisdiction of a Collector, are cognizable by the Civil Judge within whose jurisdiction the land lies.

Procedure where jurisdiction is doubtful or disputed.

2. Should in any case it appear that the Zillah Judge's jurisdiction on appeal is doubtful or disputed, he should proceed according to the provisions of Section 12 Act VIII. of 1859.

LANGUAGE.

Circular Order No 42. *Dated 5th July*, 1839.

Transmits for information and guidance the annexed copy of Sudder Court's Resolution of 5th July, 1839:

RESOLUTION.

Introduction of the vernacular into Revenue and Judicial proceedings.

Read the Resolution of the Honorable the Deputy Governor of Bengal under date the 26th March last, on the progress made in introducing the vernacular languages in the proceedings in the Revenue and Judicial Departments.

The Oordoo to be the language of record in the Sudder Court and to be written in the Persian character.

2. The Court resolve with the sanction of His Honor the Deputy Governor that the Oordoo language shall in future be the language of record in all proceedings and orders in the Sudder Dewany and Nizamut Adawlut at the Presidency, and that the same shall be written in the Persian character.

Vernacular papers in civil cases transmitted to Sudder Court, not to be accompanied with translations. In criminal cases, except in trials for thuggee, papers not Persian or Oordoo, to be accompanied with translations in Oordoo.

3. The proceedings and papers in all civil cases transmitted to this Court, which may be written either in the Persian, Oordoo, or Bengali languages shall be unaccompanied by translations; but in criminal

trials referred to the Nizamut Adawlut, with exception to trials for the crime of *thuggee*, all papers which may not be drawn up in the Persian or Oordoo language shall be accompanied by translations in the latter.*

4. All papers in the Mug, Orissa, and other dialects shall be accompanied by Oordoo translations.*

All papers in Mug, Orissa, &c., to be accompanied with Oordoo translations.

5. In the districts † in which either the Oordoo or the Bengali is the current language, parties are to be allowed in all Civil and Criminal Courts to present all petitions and pleadings in any language they think most suitable to their purpose; but any documents so presented, which may not be written either in the Persian, Oordoo, or Bengali, shall be accompanied by translations in one of these three languages. The same rule shall be applicable to *futwas* and *bywastas* required from the law officers.‡

Where Oordoo and Bengali is the current language, parties may present petitions and pleadings in any language; but such document, if not in Persian, Oordoo, or Bengali, shall be accompanied by translations in one of these languages.

6. The authorities in the Bengal districts shall correspond with each other in the vernacular language, and employ the Oordoo in their correspondence with the Courts of other districts. The same rule shall be observed *mutatis mutandis* in Cuttack and the other provinces subject to the jurisdiction of this Court.

Rule as to language in which authorities shall correspond with each other.

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* No longer necessary. See High Court's C. O. No. 8, dated 5th March, 1864. In connexion with the general subject, read also C. O. No 13, dated 10th May, 1864, and C. O. No. 1, dated 4th January, 1867.

† Since ruled that the language of the Mofussil Courts shall be "the vernacular of the district." *Vide* High Court's C. O No 16, dated 3rd June, 1864. Under certain conditions, however, an advocate or pleader may address the Court in English. *Vide* C. O. No. 4, dated 15th March, 1869.

‡ Abolished in consequence of Act XI. of 1864.

7. It appears that proceedings in Bengali are occasionally sent to authorities of districts where Oordoo is the vernacular, I am directed by the Court to request that you will strictly conform to the 7th* of the rules circulated on the 5th July, 1839, which relates to correspondence with other districts.

Circular Order No. 209.
Dated 24*th June*, 1842.
Foregoing rule to be strictly conformed to.

8. It being desirable that the proceedings of the Civil and Criminal Courts recorded in the vernacular should be generally intelligible by the adoption of a style equally removed from the colloquial, and that employed by the *pundits*, requests that Judges will pay particular attention to the subject, and refer their head ministerial officers and the Uncovenanted Judges under their control to the Bengali version of the Regulations of 1793, in regard both to the style which should be made use of by them and the terms which usually occur in legal proceedings.

Circular Order No. 146.
Dated 2*nd April*, 1841.
Style to be adopted in proceedings.

LEAVE OF ABSENCE.

Transmits for information and guidance of civil and criminal authorities the accompanying extract of a letter from the Secretary to Government in the Judicial Department, dated the 29th ultimo, together with the annexed form for observance, as directed by the 3rd paragraph of the Secretary's letter.

Circular Order No. 25.
Dated 4*th January*, 1811.
Judges to submit with their applications for leave a statement of business depending before them in a prescribed form.

Statement of business depending in the Civil Courts in Zillah ... on the ... of ... 18...

Number of original causes and appeals depending in the Civil Court.

Before the Judge, Mr.

Regular	...	...	...	...	...	...	50
Summary	...	...	...	...	...	...	10
							60

*6th in this Edition.

Para 2. The Governor-General in Council entirely approves the suggestion of the Sudder Dewany Adawlut, for directing the Zillah and City Judges in future to accompany their applications for leave of absence with a statement of the business depending before them, both in the Civil and Criminal Courts.

3. The Sudder Dewany Adawlut is requested to issue the necessary orders on the subject; at the same time furnishing proper forms for the observance of the above-mentioned rule.

2. Considerable inconvenience having been experienced from Civil and Sessions Judges quitting their stations on leave of absence without stating the extent and nature of the business pending before them, the Court desire that they will strictly conform to the rule prescribed by the Circular Order No. 25, dated 4th January, 1811, which requires that every application for leave of absence shall be accompanied by a statement of business pending before the officer making it in all departments.

Circular Order No. 177.
Dated 22*n d July*, 1836.
Strict conformity to the foregoing rule enjoined on Civil and Sessions Judges.

3. In pursuance of the orders of Government of the 15th instant, the Civil and Sessions Judges are informed that in their applications for leave of absence under Clause 11 of the Absentee Rules (which are submitted through the Court agreeably to the Circular of the 5th January last,*) they should specify as nearly as possible the date from which they desire to take leave.

Circular Order No. 82.
Dated 23*rd November*, 1849.
In their application for leave, under Clause 11 Absent Rules, Judges should specify date from which they desire the leave.

4. The rules prescribed in the Circular Order No. 131, dated 6th February, 1835,† for the observance of officers in charge of the office of Civil and Sessions Judges, not being explicit on the

Circular Order No. 97.
Dated 24*th July*, 1850.
Officer in charge of Judge's current duties, to be in charge of Judge's treasury.

* That C. O (No. 61 of 1849,) modified the practice as regards that particular kind of leave when applied for by Zillah Judges; but it upheld the practice of applications being made to Government direct in respect of other leave required by Judges or any leave applied for by P. S. As. and S. As. The Rule is much the same now, applications from Judges and Additional Judges for *privilege leave* being alone sent up *through* the *Court*. See Govt. to Court No 59J, dated 13th May, 1869.

† Not reproduced in this Edition, because superseded by Section 8 of the Bengal Civil Courts Act VI. of 1871.

subject of Judge's treasury, the Court direct in pursuance of the orders of the Government that an officer taking charge of the current duties of a Judge's office is in every case to take charge of the Judge's treasury, and will be held responsible for the performance of all duties connected with that important charge.

5. In pursuance of the orders of Government, requests that, in submitting applications from Principal Sudder Ameens and Sudder Ameens* for leave of absence on private affairs, Zillah Judges will invariably accompany them with a statement of the business pending in the Court of the applicant.

Circular Order No. 42.
Dated 24th March, 1854
Applications for leave from P. S. As. and S. As. to be accompanied with a statement of files.

6. Judges are also requested in forwarding such applications to state with reference to the amount of business pending whether the leave may be conveniently granted or not.

And to state whether leave can be conveniently granted.

7. On forwarding for the Court's sanction an application of a Moonsiff for leave of absence for a period exceeding ten days, the Judge will expressly state whether or not he considers the appointment of a *locum tenens* necessary, and will submit the statement of the business pending before the Moonsiff in the following form:

Circular Order No. 156.
Dated 6th November, 1835, *para.* 6.
Moonsiff's application for leave. Necessity for *locum tenens*. State of files.

Regular suits			145
Summary cases, *viz.*—			
Execution of decrees of Moonsiffs ...	60		
Miscellaneous cases referred by the Judge	21		
All other miscellaneous cases pending ..	36		
Cases connected with Regulation V. of 1812	5		122
Total ...			267

* Sudder Ameens merged into Moonsiffs when Act XVI. of 1868 came into force, and the office has not been revived by Act VI. of 1871, which repealed the former Act.

8. Instances having come to the notice of the Court of medical certificates having been granted to *Moonsiffs* and other Government officers on leave in Calcutta by Sub-Assistant Surgeons and apothecaries, and the practice appearing objectionable, requests that Zillah Judges will inform the various officers subordinate to them that, in cases of applications for such leave, the Court will not attend to any certificates, but those of Presidency Surgeons and medical officers in charge of stations.

Circular Order No. 1169.
Dated 4th March, 1857.
Medical certificates to Moonsiffs must be from Presidency Surgeons and medical officers in charge of stations.

9. The attention of the civil and criminal authorities is requested to the subjoined orders of Government:*

Circular Order No. 175.
Dated 14th January, 1861.
Applications for leave or pension to be submitted through Civil Auditor.

No. 12 (B)

From H. Bell, Esquire, Under-Secretary to the Government of Bengal, to H. D. Sandeman, Esquire, Officiating Civil Auditor.

Revenue. *Fort William, the 4th January*, 1867.

SIR,

I am directed to acknowledge the receipt of your letter No. 3196, dated the 26th ultimo, and in reply to state that the Lieutenant-Governor approves of your suggestion, and instruction will be issued to all officers soliciting leave of absence for themselves or subordinates, or applying for Superannuation Pensions to send their applications to you, in order that you may

* See also High Court's C. O. No 7, dated 2nd March, 1864, which required such applications when addressed to the Registrar of that Court to be enclosed in a flying cover directed to the Civil Pay Master. The practice is still in force with this exception *viz.*, that the outer envelope is addressed to the Accountant-General.

note on the back of such documents, whether the Leave or Pension is admissible under the rules of the service.

I have the honor to be,

SIR,

Your most obedient servant,

H. BELL,

Under-Secy. to the Govt. of Bengal.

Circular Order No. 189.
Dated 5th February, 1862.
Before taking leave Moonsiffs to communicate with Collector as to pending cases under Act X. of 1859.

Requests that Judges will be so good as to instruct all their subordinate Moonsiffs that before taking advantage of any leave that may be granted them, it is necessary that they should invariably communicate with the Collector of the district, regarding the disposal of cases that may be pending before them under Act X. of 1859.*

MINISTERIAL OFFICERS.

Circular Order No. 55.
Dated 25th January, 1822.
Embezzlement by ministerial officers Compensation for losses caused thereby.

Forwards for information and guidance of all Judges, Magistrates, and Joint-Magistrates the subjoined extract, paragraphs 5 to 8 inclusive, of a letter received by the Court from the Chief Secretary to Government bearing date the 27th November, 1821.

EXTRACT.

Government and Judges not to make good all losses sustained by individuals from embezzlements by native officers of Courts.

"As a general principle applicable to all cases of this description," His Lordship in Council is not prepared to concur in the opinion entertained by the Court that Government or the Judges of the Court shall make good all losses sustained by individuals from embezzlements of the description

* Still in force where Act VIII. (B.C.) 1869 has not been extended *i.e.*, in Orrisa and the Non-Regulation Provinces.

noticed in the documents now under consideration, committed by the native officers of the Courts of justice.

Nature of the duty of Courts and of Government explained in connexion with embezzlements.

"It is undoubtedly the duty of every person presiding over a Court of justice to exercise a proper superintendence and control over the officers subordinate to him, and to use due care to guard against abuses; it is no less the duty of the Government, when embezzlements have been made, to see that every exertion is used, as well to detect and punish the offenders, as to recover from their property the amount of which individuals may have been so defrauded.

Individuals to look after their own interests.

"Those individuals, however, are bound to look after their own interest and to make early application for redress to the Court by the officers of which money due to them may be withheld; and if that redress be not obtained to seek it by a further application to the superior Courts.

Effects of such a course.

"If such a course had been uniformly adopted in the case now under consideration, the system of fraud pursued at Dacca could not have remained long undiscovered, and the ultimate loss, if not entirely guarded against, might at all events have been materially diminished."

Circular Order No. 12.
Dated 1st January, 1830.
Acting officers to be reported upon within six months from date of nomination.

2. The Courts of Sudder Dewany and Nizamut Adawlut having reason to believe that a practice prevails in some districts of keeping the *Omlah* and other officers on the establishment of the Judges and Magistrates in acting capacities, without reporting them for confirmation to the superior authorities until after the lapse of very long periods, and being of opinion that such practice is highly objectionable, the civil and criminal authorities are hereby required, on

all future occasions on which they may nominate an individual, to act in any situation in their Court, whose confirmation in the same may require the sanction of superior authority to make a report to such authority as to the fitness of the officiating person, within the period of six months from the date of his original nomination.

3. Transmits to the several civil and criminal authorities for their information and guidance the accompanying extract from the proceedings of the Right Honorable the Governor-General in Council in the Military Department, regarding the entertainment in one department of the public service of persons holding employment in another.

Circular Order No. 110.
Dated 16th October, 1840.
Entertainment in one department of persons holding employment in another, prohibited.

Extract of a Military letter from the Honorab'e the Court of Directors No. 33, dated 10th June, 1840.

14. As it is of much importance that natives, who have been trained to the duties of an office more especially to duties of an office of a scientific nature, such as those performed by Radhanath Sickdar, should not be cited to quit their stations with a view to their own advantage in another branch of Government employ, we fully approve of the intimation given by you to the Revenue Board that "it was wrong for one department of the State to bid against another for the services of competent officers." We are of opinion that all departments should be apprised that they must not only not invite, but must positively refuse to entertain, an application for employment from any native who is at the time of making the application, in the public employ of a Government office or department, unless they shall have previously received the full acquiescence of the head of such office or department.

ORDERED :—

That the preceding extract of the Honorable Court's letter be transmitted to the several departments mentioned in the margin for information and for communication to the heads of offices and other authorities in correspondence with those departments respectively as may appear to be necessary.

4. Draws the attention of District Judges to the following instructions on the subject of the establishment of Omlah &c., to be entertained in the subordinate Civil Courts in the Lower Provinces.*

Circular Order No. 17.
Dated 6th May, 1861.

5. The number of Omlah, &c., in the several Courts referred to should be reduced at once and fixed according to the

* By Chapter VI, of the Bengal Civil Court's Act the general control over the appointment, removal, &c., of ministerial officers in Mofussil Courts is vested in the Local Government, not in the Court.

following scales, which have been laid down by His Honor the Lieutenant-Governor.

Court of Principal Sudder Ameen.

1	Sheristadar	Rs.	50	0	0
1	Peshkar	„	20	0	0
1	Nazir	„	* 10	0	0
4	Mohurrirs at 10 each	„	40	0	0
2	Chuprassees at 5 each	„	10	0	0
Stationery		„	15	0	0
Duftory		„	5	0	0
		„	150	0	0

Court of Sudder Ameen.

1	Sheristadar	„	25	0	0
4	Mohurrirs at 10 each	„	40	0	0
1	Nazir	„	* 7	0	0
Stationery		„	8	0	0
		„	80	0	0

Where the Sudder Ameen is also Moonsiff, the above establishment must suffice for both Courts.

Court of Moonsiff.

1	Sheristadar and Nazir with fees ..	Rs.	*12	0	0
3	Mohurrirs at 8 each	„	24	0	0
Stationery		„	* 4	0	0
		„	40	0	0

* By the orders of Government (No. 5122, dated 8th December, 1862) which accompanied High Court's Circular Order No. 1407A, dated 17th December, 1862, the status of the Nazir was greatly modified, their fees having been credited to Government, and their salaries placed on a "permanent and liberal footing." Under that modification, the Nazir of the P. S. A and S. A. was allowed Rs. 40 per mensem, and the Nazir of the Moonsiff's Court, whose office was separated from that of Sheristadar, was allowed Rs. 20, while the Sheristadarship was created into a distinct office with a salary of Rs. 25 per mensem. The Moonsiff's stationery allowance was also raised to Rs. 8 a month. A further increase of salaries of Nazirs has since been sanctioned. See High Court's C. O. No. 18, dated 28th June, 1867. The scale of salaries which now obtains is that which was proposed in the Report of the Committee appointed by Govt. Order, dated 19th July, 1867 No. 2181, and which fixes the limits given below:

Subordinate Judges' Courts.		*Moonsiffs' Courts.*	
Sheristadars ...	Rs. 50 to 70	Sheristadars ...	Rs. 40 to 60
Second officers ...	„ 30 to 50	Others ...	„ 20 to 30
Others ...	„ 20 to 30		

The allowance for stationery to these Courts has been altered by the recent revision, so far as regards Moonsiffs only, whose allowance has been raised from Rs. 8 to 12 *per mensem*. See High Court's C. O. No. 19, dated 17th June, 1872.

As the cases under Act X. of 1859 are, in many instances, only the civil actions, which the Moonsiffs used to try previous to the passing of that Act, and as if the Moonsiffs were not employed in trying them, they would be engaged in ordinary Moonsiff's work, no extra establishment can in any case be sanctioned on this account.

Moonsiff's Sheristadar to have charge of records, but to be seldom employed in reading out papers. This duty to be performed by Peshkars and Mohurrirs. All subordinate ministerial officers to be designated Mohurrirs.

6. The position of Sheristadar,* on whose character and conduct the respectability of the whole establishment mainly depends, will be much improved by the new arrangements; and though the presiding officer of each Court will, from time to time, assign to each Mohurrir, (by which term all the subordinate ministerial officers should be designated in future), such particular department of work as may to him appear proper, the Sheristadars will have charge of, and be responsible for, all the records while they are still in the Lower Courts, and before transit to Zillah Judge's office for deposit. The Sheristadars may make their own arrangements for each Mohurrir to keep in good condition and order the files of the cases that may be made over to him. They should be employed as seldom as possible in the reading out of papers which duty should be performed by the Peshkars and Mohurrirs.

Omlah connected with presiding officer transferred. Nominee's connexion with him or his Sheristadar to be reported.

7. Judges will be so good as to transfer immediately to other Courts all Omlah connected with the presiding officer of any Court under their jurisdiction. In future, when vacancies occur in the establishments of the subordinate Courts, the presiding officer will report to the Judge whether the individual, whom he appoints

* The Sheristadar should not be kept in attendance on Judges of any grade. See High Court's C. O. No. 27, dated 4th October, 1871.

or recommends, is connected with him, or his Sheristadar or not. Nominations to the posts of Sheristadar and Peshkar must invariably be submitted to the Judge for confirmation.*

Circular Order No. 41.
Dated 19*th January*, 1844.
Native ministerial officers not to be entertained on lower salaries than those fixed for their situations.

8. An instance having come to the knowledge of the Government of native ministerial officers being entertained on lower salaries than those fixed by the Government for the situations they held and the difference carried to the public credit, the Court, in pursuance of instructions received by them, intimate to the different officers under their control that the Honorable the Deputy Governor considers this practice to be extremely objectionable, and desires that it may not under any circumstances be repealed.

Circular Order No. 23.
Dated 5th October, 1838.
No officer employed under native Judges to be dismissed except for misconduct or incapacity, or to be required to resign so long as he discharges his duties correctly and efficiently.

9. The Court having become aware of an instance in which a Principal *Sudder Ameen* dismissed the *Omlah* of the Court to which he had been appointed, with a view to make room for those who were employed under him in another district, request that the Zillah Judge will warn the Principal Sudder Ameen and other native Judges attached to his jurisdiction of the impropriety of such a proceeding, and impress upon them that no officer employed under them is to be dismissed except on the score of misconduct or incapacity; and that they are not in any way to compel, or require an officer to resign his situation so long as he discharges his duties in a correct and efficient manner.

* Under Act VI. of 1871, Sub-Judges and Moonsiffs are required to appoint as well as nominate their ministerial officers, "subject to the approval of the District Judge."

MOOKHTARNAMAHS

As doubts have been entertained whether a *Zillah* or City Judge is competent to employ a Principal *Sudder Ameen* in attesting *mookhtarnamahs* required to be filed in other Courts, the Court inform those Judges that such duty may be entrusted to a Principal *Sudder Ameen* whenever the measure may appear advisable.

Circular Order No. 138.
Dated 6th March (W. P.) } 1835.
Dated 3rd April (L. P.) }
A Principal Sudder Ameen may attest mookhtarnamahs, when it appears advisable to entrust him with that duty.

2. The Court at the same time call their attention to the provisions of Section 7 Regulation XX. of 1812,* which distinctly declare that no document shall be registered, but such as are enumerated in that enactment, or in Regulation XXXVI. of 1793* or XVII. of 1803.* As *mookhtarnamahs* are not mentioned in these Regulations, the Principal *Sudder Ameen* should be cautioned against registering such papers, or levying any fee or gratuity for attesting them.

3. In supersession of the Circular Order No. 138, dated Western Provinces, 6th March, and Lower Provinces, 3rd April, 1835, the Court are pleased to declare that the District Judges are competent to employ generally the *Sudder Ameens* and *Moonsiffs* equally with the Principal *Sudder Ameen* in attesting *mookhtarnamahs* required to be filed in other Courts.

Circular Order No. 72.
Dated 8th November, 1844.
(L. P. and W. P.)
Sudder Ameens and Moonsiffs may be employed equally with P. S. Ameens in attesting mookhtarnamahs.

4. The Uncovenanted Judges of every class should be required to affix their official seals as well as their signatures to *mookhtarnamahs* and cautioned against registering such papers, or levying any fee or gratuity for attesting them.

Uncovenanted Judges to affix their seals as well as their signatures to mookhtarnamahs. Cautioned against registering such papers, or levying a fee for attesting them.

* Repealed by Act XVI. of 1864. The registration of *Powers of Attorney* is made optional by (Clause 7) Section 18 of the Registration Act (VIII.) of 1871, which extends also to "all other documents" not therein mentioned.

5. The personal appearance and acknowledgment of the party executing the mookhtarnamah is unnecessary, it being quite sufficient that the execution of the document be proved by two credible witnesses.

The personal attendance of party executing the mookhtarnamah not necessary.

6. The following rules of practice which have been adopted by the Courts of Sudder Dewany Adawlut are prescribed for the guidance of the Zillah Courts and the Courts subordinate to them.

Circular Order No. 34.
Dated 15*th September*, (*L.P.*) } 1843.
Dated 2*nd October*, (*W.P.*) }
Rules of Practice.

7. *Vakalutnamahs* whether executed by principals or their attorneys and agents, and *mookhtarnamahs* under the authority of which *vakalutnamahs* are executed, shall not hereafter be required to be verified on oath. The responsibility, in regard to all such documents being properly and correctly executed, shall rest entirely with the *Vakeels.*

Vakalutnamahs and mookhtarnamahs not required to be verified on oath.

8. The above rule does not apply to cases in which only *mookhtars* or agents are employed. In all such cases the *mookhtarnmah* shall be verified on oath as at present.

Except where only mookhtars are employed.

MORTGAGE.

Transmits to the Provincial Courts of Appeal the accompanying extract from the Court's proceedings of this date, and desires that they will circulate the same for the information and guidance of the Judges of the several districts in their division.

Circular Order No. 37.
Dated 22*nd July*, 1813.
Instructions as to mortgages.

Extract from the proceedings of the Sudder Dewany Adawlut, under date the 22nd July, 1813.

2. The Court remark that the sole intention of Section 8 Regulation XVII. of 1806 is to prevent the conditional sales called *bye-bil-wufa or kut-cabala* from becoming absolute, until the seller shall have received from the Dewany Adawlut a notice that the purchaser has demanded payment of the amount due upon the contract (inclusive or exclusive of interest according to circumstances), and that, if the seller shall fail to satisfy the demand in the manner prescribed in the preceding Section of the same Regulation within the year from the date of the notice, the sale will become absolute.

Intention of Section 8 Regulation XVII. of 1806 in regard to a conditional sale becoming absolute.

3. The duty of the Zillah and City Judges under this Section is (as far as the purchaser is concerned) purely ministerial, leaving them nothing to do but to cause the prescribed *perwannah* to be served on the seller, and to receive and pay over to the purchaser, if desirous of receiving the same, whatever amount may be paid in by the seller, to receive due proof of the service, or if the purchaser should refuse to accept the same, to restore it to the seller.

Duty of Judges under Section 8 purely ministerial.

4. The Provincial Court appears to have viewed the Sections quoted above, as implying that the seller, on receiving the notice prescribed, is bound within the period of a year to pay the amount demanded, and as providing that if the seller fail to make such payment, the purchaser is immediately to be summarily put in possession of the lands conditionally sold.

Judge not authorized to dispossess the seller, and give up the lands to the purchaser.

The Court are of opinion that nothing contained in the Sections above quoted warrants such construction, and that

the said Sections do not in particular vest the Judge with authority to dispossess the seller, and give up the lands to the purchaser.

5. That the said Sections, as justly noticed by the Provincial Court, provide no summary inquiry in the cases to which they relate; that upon the construction adopted by that Court, it would, therefore, follow that a person might be compelled to pay a large sum of money, or be ousted of his estate for several years upon the mere demand of another, without the least inquiry or proof that he should deny the authenticity or validity of the alleged engagement.

Sections 7 and 8 provide no summary inquiry.

6. That if, however, the seller fail to make the payment demanded, he must do so at his peril, since should it prove that the alleged sale was authentic and valid, and that any part of the amount demanded was due, the sale will have become absolute, and he must, on a suit being brought against him, lose his lands.

If seller, however, fail to make the payment demanded, he must do so at his peril.

According to the construction stated above of the Sections in question, it follows that the summary inquiry made by the Judge in the present case was superfluous.

7. The Court further entirely acquiesce in the observation of the Provincial Court that the purchaser not having obtained possession, the Judge of Zillah Nuddea should have called upon the seller for payment, both of principal and interest according to the demand of the purchaser. The Court are of opinion that the Provincial Court was clearly competent to rectify this error of the Judge, by directing him to issue a further notice to the seller, calling upon him within a reasonable period, to be inserted in the notice, to pay interest as well as principal.

If the purchaser does not obtain possession, the seller must be called upon for payment both of principal and interest.

8. Though not immediately connected with the question before them, the Court, to guard against the preceding instructions being misinterpreted, deem it necessary to add that they do not apply to the case of a borrower on a *bye-bil-wufa*, who had delivered over possession to the lender, paying up the principal sum advanced before the sale has become absolute. The Court are of opinion that the borrower in such case would, by Section 2 Regulation I. of 1798, be entitled to receive possession summarily without suit.

The above instructions do not apply to the case of a borrower on a *bye-bil-wufa* delivering over possession, and paying up principal before sale becomes absolute.

9. The Court having, on several occasions, observed that the Judges of the *Zillah* and City Courts, subject to their jurisdiction, are in the habit of deviating very considerably from the course laid down for the proceedings on the receipt of petitions relative to conditional sales under the provisions of Regulation XVII. of 1806, in some instances even trying such cases by a summary process, and including them in their abstracts of summary cases, request attention to the Circular Order of the 22nd July, 1813, in which the construction to be put upon the enactment in question, is fully explained. You are requested in future to observe strictly that construction, and in no respect to exceed the bounds thereby prescribed to the exercise of the authority deligated to you by the Regulation above cited.

Circular Order, No. 50. Dated 25th May, 1832. Request attention to foregoing construction.

10. The Court having reason to believe that a practice very generally prevails in these provinces of the Zillah and City Jugdes declaring in the summary proceeding held by them under the provisions of Regulation XVII. of 1806 in cases of mortgage and conditional sale commonly

Circular Order No. 105. Dated 15th January, 1834. In the summary proceeding held under Regulation XVII. of 1806, Judges not to give judicial opinions, but to confine themselves to recording the facts which have occurred in the progress of the summary process.

called *bye-bil-wufa*, that the sale has become absolute, solely on the application of the conditional purchaser at the expiration of the period allowed by law for redemption of the mortgage, and that, moreover, they are in the habit of giving judicial opinions, not only upon the fact of the foreclosure of the mortgage or conditional sale, but also upon other points which frequently arise in the course of the summary process, the decision of which entirely belongs to a regular suit, and deeming such practice liable to serious objections, particularly as on the institution of a regular suit for possession of the mortgaged property, the native judicial officers, by whom such cases are frequently cognizable, are apt to consider that the sale, having already been declared absolute by the Judge, they are not competent to question and pass their own judgment upon that point, and, therefore, give possession merely on the ground of the summary proceeding held by the Judge. Request that in future proceedings of this nature, the Judge will directly confine himself to recording simply the facts which have occurred during the progress of the summary process, such as the application of the conditional purchaser, the issue and service of the prescribed notice, any petitions which may have been prescribed by either party, and generally the other particulars adverted to in the second paragraph of the Circular instructions of the 22nd July, 1813, No. 57.

Circular Order No. 7.
Dated 9th April, 1817.

The period allowed for the redemption of mortgages and conditional sales.

11. Transmits for information to the Provincial Courts of Appeal copy of a Circular letter written to the Zillah and City Judges on this date, relative to the period allowed for the redemption of mortgages and conditional sales by Section 8 Regulation XVII. of 1806.

EXTRACT FROM ABOVE LETTER.

"It having since come to the knowlege of the Court that the written notification to the mortgagor or his representative directed in that Section, instead of being immediately issued as evidently intended by the express terms of the Regulation, is sometimes delayed for a month and upwards, whereby the mortgagee's application for a foreclosure is not made known to the mortgagor so early as it ought to be; whilst at the same time the year allowed for redemption must necessarily be calculated, as prescribed from the date of the notification,* the Court are of opinion that whenever a *perwannah* to a mortgagor or his legal representative, containing the notification prescribed in Section 8 Regulation XVII. of 1806 may not be issued on the date of its being ordered, it should bear the date on which it may be actually issued, instead of that on which the perwannah may be ordered, and that the term of one year allowed for redeeming the mortgage should be calculated from the date so inserted.

Perwannah containing the notification prescribed by Section 8 Regulation XVII. of 1806 to bear the date of actual issue; and the year of grace to be calculated from that date.

"You are accordingly desired to observe this rule in issuing any future notifications of the nature referred to, at the same time giving particular attention to prevent any unnecessary delay in issuing such notifications which, in justice to mortgagees as well as in conformity with the intention of Sections 7 and 8 Regulation XVII. of 1806, should be issued as soon as possible after the receipt of the mortgagee's application for a foreclosure."

The above rule to be observed; and notification to be issued as soon as possible.

* Under a ruling of the High Court, the calculation is to be made "from the date of the service of the notice." See *Full Bench case* No. 1977 of 1867 Mohesh Chunder Sen, *versus* Tarinee. I. B. L. Rep., F. B. 14 and X., W. R., F. B. 27.

12. At the suggestion of the Western Court, the Court are pleased to adopt the following Circular issued by them under date the 8th ultimo:

Circular Order No. 74.
Dated 3rd October, 1855.
Date of notification to be identical with that of issue; but not to be inserted till *tullubanah* has been deposited.

"In modification of Circular Order Sudder Dewany Adawlut No. 7, dated 9th of April, 1817, the Court are pleased to direct that, in the notification prescribed by Section 8 Regulation XVII. of 1806, the date shall not be inserted till the required *tullubanah* has been deposited, on that being paid by the mortgagee, the date should be filled in, and the notification issued, in other words, the date of the notification and the date of issue should be one and the same.

13. It is believed that construction No. 630, dated 11th March, 1831, has been generally considered to prohibit a Judge from calling on the mortgagee to produce his deed of mortgage in the course of the miscellaneous proceedings required by Section 8 Regulation XVII. of 1806, to be held on an application for foreclosure. The Courts of Sudder Dewany Adawlut having been in communication on the subject deem it proper to notify that the majority of the two Courts have held that, under the terms of the enactment cited, a Judge is not precluded from satisfying himself, by requiring the production of the document, that the applicant for foreclosure is the "receiver or holder of a deed of mortgage," and this view of the law is not at variance with the opinion expressed in construction No. 630, which explains only "that it is not required by the Regulation that a copy of the deed of mortgage should be served on the mortgagor," but does not say that the Judge is not at liberty to call for it, in order to satisfy himself that the applicant is what he represents himself to be.

Circular Order No. 46, *L.P. & W.P.*
Dated 5th June, 1848.
A Judge is not precluded from calling for production of deed of mortgage.

NATIVE JUDGES AND (NATIVES OF RANK.)

Communicates the following instructions in modification of those issued under date the 1st December, 1837, No. 218, on the subject of the mode of address to be adopted by native Judges when corresponding on matters of business with Covenanted officers and natives of rank.

Circular Order No. 59.
Dated 16*th November*, 1839.
Mode of address when native Judges correspond with Covenanted officers and natives of rank.

2. Principal *Sudder Ameens* and Sudder Ameens will correspond direct by *roobakaree* with all Covenanted officers of Government except the Secretaries to Government; the Sudder Dewany Adawlut (with the exception of references in suits above Rs. 5,000 referred to Principal *Sudder Ameens* for trial under the provisions of Act XXV. of 1837),* the Sudder Board of Revenue, Residents at Foreign Courts, Agents to the Governor-General, and all military officers.

P. S. As. and S. As. with whom to correspond direct by *roobakaree*.

3. As regards communication with the three first-named authorities excepted by the preceding paragraph, and with military officers, the present practice is to be continued.

4. Whenever a Principal or other *Sudder Ameen* may have occasion officially to address a Resident at a Foreign Court or a Governor-General's Agent regarding any matter connected with a suit before his Court, he shall transmit a simple Oordoo *kyfeut* or statement of the particular matter on which he may desire a reference to be made, without the addition of any application or requisition on his own part,

Resident at a Foreign Court or Governor-General's Agent how to be addressed.

* The repeal of this Act was completed by Act XVI. of 1868. The jurisdiction of P. S. As. (now designated *Subordinate Judges*) extends, subject to the provisions of Section 6, C. P. C. to all original suits cognizable by the Civil Courts. *Vide* Bengal Civil Courts' Act VI. of 1871, Section 19.

to the Judge to whom he may be subordinate, who, on the receipt of such statement, will forward it to the Resident or Agent concerned, accompanied by an English letter containing such request, or application as the nature of the reference may appear to call for, to be dealt with as the authority addressed may deem discreet and fitting.

Native Judges to observe proper respect towards natives of rank who will be required to pay proper respect to the former. How each should address the other.

5 In communicating these instructions to the native Judges, the Zillah Judge will, of course, impress upon them the propriety of observing a proper respect towards all natives of rank with whom it may be necessary to correspond on official matters, and addressing them in the form and style employed on like occasions by the European Judge of the district. In like manner natives of rank will be required to pay proper respect to the native Judges, adopting, as a general rule, the forms of address laid down in the Court's Circular No. 9 of the 6th July, 1838. *

Circular Order No. 171.
Dated 19*th November*, 1841.
Native gentlemen to be addressed in a courteous style suitable to their station.

6. An instance having been brought to the notice of the Government of an improper mode of address towards a native gentleman of rank by a public functionary, the Court request that Zillah Judges will be careful that native gentlemen, and particularly those of high rank, are addressed in all public documents in a courteous style suitable to their station in society.

NAZIRS.

Circular Order No. 164.
Dated 4th July, 1860.
Surplus of deposit to be repaid to litigants after Nazir's necessary expenses have been paid.

It has been brought to the notice of the Court that Nazirs of Subordinate Courts, when deputed under the authority of paragraph 4 of the Court's Circular No. 24 [No. 105 Pub. Ser.] of

* See FORMS OF ADDRESS at page 93 of this work.

the 6th November, 1857,* have been allowed to appropriate the surplus of sums deposited by litigants under paragraph 9 of the Circular, whereas Circular No. 6 [No. 113 Pub. Ser.] of the 12th March, 1858† specially provides under rule 6 of the Circular that the Nazir, when employed in the interior for any of the purposes mentioned in Act XII. of 1856, shall be paid his necessary expenses only. Hence it follows that any surplus remaining after payment of those expenses will be repaid to the litigants, and an account with this object should always be required from the Nazir.

NOTIFICATIONS.

Circular Order No. 6.
Dated 9th April, 1817.
Proceeding to be observed in issuing public notifications.

Transmits, for information of the Courts of Appeal and Circuit, the accompanying copy of a Circular letter written to the Zillah and City Judges and Magistrates on this date, relative to the mode of proceeding to be observed in issuing public notifications, to be affixed in the Court-room of the Zillah and City Courts, or in the cutcherries of the Collectors.

Copy of a letter written by order of the Sudder Dewany and Nizamut Adawlut to the Zillah and City Judges and Magistrates on the 9th April, 1817.

Question as to Collector's notifications requiring to be affixed in the Court-room and Judge's or Magistrate's proclamations to be published in the Collectorate cutcherry.

A question has arisen whether advertisements for the public sale of lands and other notifications published by the Collectors, which are required by the Regulations to be affixed in the Court-room of the Zillah or City Dewany Adawlut, should

Vide page 28 of this work, under the head of AMEENS at para. 4, where certain duties to be assigned to *Nazirs* are specified.

† *Vide* page 34 of this work, under the same head at para. 24 which lays down the principle on which his expenses are to be paid and the mode in which his duties are to be transacted.

For Nazirs' salaries, &c., see foot-note at page 130 under head MINISTERIAL OFFICERS.

be so affixed without any direct application to the Judge, the Regulations, not containing any express provisions upon this point, and whether proclamations which the Zillah and City Judges and Magistrates may have occasion to publish in the Collector's cutcherry, should be transmitted for that purpose to the Collector. I am directed by the Court of Sudder Dewany and Nizamut Adawlut to communicate the following opinion and instructions for your information and guidance.

2. The Court are of opinion that all advertisements from public sales or other notifications issued by the Collectors, and intended to be affixed in the Court-room of the Zillah or City Dewany Adawlut, should bear a superscription under the signature of the Collector, requesting the Judge to cause the same to be read and affixed in the Court-room of the Dewany Adawlut, that it should be enclosed in a cover addressed to the Judge, and should be delivered to the Judge (or in his absence to his Register) who, on receiving it, should note and attest the date of receipt, and cause it to be immediately read and affixed in the Court-room as requested.

The former to be sent by Collector to Judge. Manner of transmission and mode of disposal.

3. The Court are likewise of opinion that a similar mode of proceeding should be observed with respect to any proclamation which the Judges and their Registers or the Magistrates and their assistants may have occasion to publish in the cutcherries of the Collectors; that the proclamation in such cases should be enclosed in a cover addressed to the Collector, with a superscription under the signature of the Judge, Magistrate, Register, or assistant to the same effect as that above noticed; and that the Collector, (or in his absence his assistant) on receiving it, should note and attest the date of receipt, and

The latter to be addressed to Collector by Judge or Magistrate, &c. How to be sent and in what way to be dealt with.

cause it immediately to be read and affixed in his cutcherry, as requested.

4. The Court will accordingly recommend to Government that instructions be issued to the Collectors, conformably to the 2nd paragraph of this letter, and you are desired to observe the rule of proceeding stated in the 3rd paragraph.

NUMBERING OF SUITS.

Circular Order No. 40 (*L. P. & W. P.*) *Dated* 18*th January*, 1844.

An annual series of numbers instead of a continuous series to be maintained for regular and miscellaneous cases.

The Court having reason to believe that, in some Courts it is customary, in the enumeration of regular suits and miscellaneous cases, to maintain one consecutive series of numbers, a practice which is as inconvenient as it is useless, whereas an annual series is obviously more suitable and equally efficient for all purposes of record and reference, request that, if the objectionable practice adverted to should have hitherto obtained in his jurisdiction, the Civil Judge will discontinue it, and commence a new series of numbers with the commencement of each successive year, introducing this plan at once, and making it applicable to all suits and miscellaneous cases, which may have been brought upon his files, and those of the subordinate Courts since the 1st instant, or which may be hereafter instituted.

2. Civil Judges are requested to forward a correct translation of this Circular to all the Courts subject to their control.

PAUPER SUITS.

Circular Order No. 87.
Dated L. P. 12*th June*, } 1840.
„ *W. P.* 24*th April*, }

Stamp duty in pauper suits. Interests of Government.

Communicates to Zillah Judges the following rule which it has been resolved, in accordance with a suggestion of the Sudder Board of Revenue for the North-Western Provinces, to adopt with a view to protecting the interests

of Government in respect to stamp duty in pauper suits before the *Moonsiffs*, who are empowered to try such suits when referred to them by the Judge, but have no pleaders on the part of Government attached to their establishment.

Copy of Moonsiff's decree in pauper suits to be forwarded to Zillah Court for information of Government pleader.

2. Whenever a pauper's suit may have been referred for trial and decision to a *Moonsiff*, the Judge will be careful to instruct him invariably to forward to the Zillah Court a copy of his decree for the information of the Government pleader in the Zillah Court, in order that the latter may take necessary steps for asserting the rights of Government, in pursuance of directions which he will receive to that effect in the Revenue Department.

Form laid down for monthly statement to Collector of stamp-fees due to Government in pauper suits.

Circular Order No. 127. (*L.P. & W.P.*)
Dated 24th April, } 1846.
Dated 2nd October, }

3. Pursuant to the instructions of the Government, the Court direct that a statement in the subjoined form on account of their own and subordinate District Courts, be furnished by Civil Judges monthly to the Collector, to enable that officer to take measures for recovering the amount due to the Government on account of stamp fees in pauper suits.

Expenses of witnesses in pauper suits.

[As regards *expenses of witnesses in pauper suits, vide* page 25 of this work, para. 70 under the head Act VIII. OF 1859.]

FO

STATEMENT shewing the number of Pauper Suits decided in
of *with the amount of*

By whom decided.	Date of institution of Suit.	Number of the Suit as per file, whether Regular or Appeal.		Names of Suitors, with their places of residence.
Judge	10th May, 184 ...	1231	Regular	Joydeb Pundit, Plaintiff, of *Thannah* Rambag, *Pergunnah* Bhowanigunge, *versus* Jogessur Roy, defendant, of *Thannah* Churruckdangah, *Pergunnah* Joypore ...
P. S. A. ...	22nd April, 184 ...	1238	Appeal	Ramsurn Bhutta, defendant, appellant, of *Thannah* Sundeep, *Pergunnah* Aitch, *versus* Gopaulbullub Roy, plaintiff, repondent, of *Thannah* Bistopore, *Pergunnah* Jugdeespore ... ...
S. A.	8th January, 184 ...	521	Regular	Gopaul Lall Dutt, plaintiff, of *Thannah* B., *Pergunnah* D., *versus* Ahmed Kasim, defendant, of *Thannah* P., *Pergunnah* E. ...
Moonsiff of Thannah Nabobgunge ...	7th December, 184 ...	413	Ditto	Ramhoree Tewarry, plaintiff, of *Thannah* N., *Pergunnah* G., *versus* Samsoonder Mundul, of the same place ... ...

ZILLAH
DEWANY ADAWLUT,
The 184

RM.

the Civil Courts of Zillah *in the month*

Stamp Duty leviable on the amounts of the Suits decided.

Nature of the Suit.	When decided.	Substance of the order passed.	Amounts of Suit decided.			Stamp Duty leviable as per the Regulations.			Remarks.
Loan of Sa. Rs. 12,132 13 annas 13 *gundahs* on mortgage of landed property ...	13th June, 184	Decreed with costs in favor of plaintiff	14519	7	15	982	10	4	
Claim of 8 annas share in *Talook* Shumsheregunge, estimated value 418-7-4	11th May, 184	Decision of the *Moonsiff's* Court dismissing the suit reversed, and 8 annas share adjudged to appellant ...	513	4	6	52	4	3	
Revenue of 10 beegahs of paddy land forcibly possessed by defendant ...	12th April, 184	Decreed with interest in favor of plaintiff ...	452	1	9	47	5	6	
Loan on *Tamasook*	11th ditto.	Ditto with costs	192	3	2	17	5	6	

C. D.,

Judge.

4. Forwards for the information of the Zillah authorities copy of a letter to the Judge of Backergunge, dated 13th idem:

Circular Order No. 188.
Dated 18th January, 1862.

"I am directed to acknowledge the receipt of your letter No. 51, dated the 14th ultimo suggesting that a provision be added to Act XXXVI. of 1860, to the effect that nothing contained in that Act shall be considered as affecting the rules in force regarding the granting of copies of decrees, &c., to paupers, the Act appearing to you to be defective on the point.

Granting copies of decrees &c., to paupers.

II. "In reply I am directed to observe that the maxim referred to by you that a subsequent law rescinds even without express words, a previous law on the same subject matter does not affect the present matter. Section 308 of Act VIII. of 1859 provides that when a pauper's application to sue is granted, it shall be deemed a plaint, and the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of pleader, or other proceeding connected with the suit, or with the execution of any decree passed in regard to it, and Section 309 of the same Act provides that the stamp due to Government may be recovered eventually from any party ordered by the decrée to pay the same in the same manner as costs of suit are recoverable. These Sections remain in force notwithstanding Act XXXVI. of 1860, which, though a law applicable generally to all parties, in no way touches the special provisions of Act VIII. of 1859, as to the mode in which stamps are to be recovered in pauper cases.

Sections 308 and 309 Act VIII. of 1859 remain in force notwithstanding Act XXXVI. of 1860 which does not touch their special provision as to the recovery of stamps in pauper cases.

III. It therefore appears to the Court that no new provision is necessary to remove doubts which really do not exist, as under Section 308 of Act VIII. of 1859, a copy of any judgment

No new provision necessary. Copy of a judgment required for appeal should be given to a pauper on plain paper, and a copy of the decree is not required for execution.

that is requisite to enable a pauper to appeal, should be given to him on plain paper; and as an application for execution of decree is only necessary to take out execution, no copy of the decree is required at all.

PLEADERS.

Circular Order No. 1859.
Dated 27th April, 1860.

Forwards for the information of each Judge in the Lower Provinces, copy of the following resolution:

Resolution of the Presidency Court of Sudder Dewany Adawlut under date the 27th April, 1860.

Present:
H. T. Raikes
and
C. B. Trevor
and
} Judges.

G. Loch, Officiating Judge.

The Court having had under consideration the several resolutions passed by it, under which individuals holding law diplomas of the Presidency College or certificates under paragraph 3 of the statutes, which regulate the conferring of *Decrees-in-law* in the Calcutta University have been allowed to practise at the bar of the Sudder and Mofussil Courts, now determine that, in future, only those who have attained the degree of B. L. or that of Licentiate of Law in the Calcutta University* shall be deemed to be eligible to practise in the aforesaid Courts, and that no one so qualified can be admitted to practise without first subscribing the usual declaration before a Judge of the Sudder Court.

* By a later Resolution of the Court, dated 8th July 1864, L.Ls have been excluded from this privilege which is open to B. Ls. alone The High Court has prescribed no *lex scripta* to regulate the admission of pleaders to its Appellate Bar; but the rule of practice introduced by the Sudder Court's Resolution of the 27th April, 1860 has all along been observed, only B. Ls. of the Calcutta University being admitted. This is done on their producing a certificate of moral character, and making the usual declaration. In addition to this a fee of Rs. 50 for admission is charged under the orders of the Government of India.

2. The Courts of Sudder Dewany Adawlut for the Lower and Western Provinces notify for general information and guidance the fact of the incompetency of *vakeels* in suits to receive without special power sums realized in execution of decrees. They observe that the powers conferred on a vakeel cease on the enforcement of the decree, that is, on payment of the money (if money be decreed) into Court. Taking the money out of Court is a subsequent and separate transaction, and should not be permitted to a *vakeel* except where his *vakalutnamah* by a special clause to that effect, or any separate instrument, may distinctly confer on him the authority to receive it.

Circular Order No. 229.
Dated 28*th September*, 1842.
Vakeels in suits are incompetent without special power to receive sums realized in execution.

3. As connected with the subject of delay in the preparation of cases, the Court take the opportunity of adverting to complaints which have been preferred to them by various Uncovenanted judicial officers, with whom they have communicated, of the indolence and inattention of the pleaders practising in their Courts and of their inability without the aid of superior authority to control them. The Court direct that the several judicial authorities be careful in future to note instances of misconduct on their occurrence, and, if so, frequently repeated as to impede the transaction of business to punish the offending parties by dismissal from office, or, otherwise as the occasion may seem to demand.*

Circular Order No. 79.
Dated 3*rd February*, 1845.
Misconduct of pleaders to be noted and punished.

4. Transmits for information and guidance of Civil Judges, the subjoined extract from the orders of Governmentand from the report of the Superintendent of Legal Affairs, regarding the

Circular Order No. 23.
Dated 2*nd July*, 1847.
Government Vakeels. Supply of satationery and assistance towards copying papers.

* Under the Pleaders' Act (XX of 1865), the power of suspending or dismissing a pleader is vested in the High Court. See Sections 14 to 16.

supply of stationery from their office to the Government *Vakeel* and the occasional assistance of a *mohurrir* for copying papers required from him by public officers.

Extract from para. 3 of the Report of the Superintendent and Remembrancer of Legal Affairs for the year 1845-46.

"If the objection to an increase of salary is insuperable, I would request that orders may at least be issued to supply the pleaders with writing materials from the Judge's office, and that either the Judge or Collector may be directed to furnish a *mohurrir* when necessary, for the purpose of taking copies of documents required for the use of this and other offices.

Extract (para. 3) from a letter from the Government of Bengal to the Court No. 389, dated 19th May, 1847.

"His Honor having been pleased to approve of the propositions contained in para. 111, for an allowance to the vakeel of stationery and also of the occasional services of a mohurrir, I am directed to request that the Court will issue to the Zillah Judges the necessary instructions on the subject."

5. Pursuant to the orders of Government, dated the 22nd ultimo, the Court notify for the guidance of the Zillah Judges that the expense, which may be incurred for the supply of stationery under the Circular Order No. 23 of the 2nd July, 1847, to the Government pleaders, may be charged for in a contingent bill, when the sum allowed for stationery *in their offices* is insufficient.

Circular Order No. 38. *Dated 6th April,* 1848. Expenses of stationery supplied as above, to be charged for in a contingent bill, when beyond the prescribed allowance.

6. With reference to the terms of Section 4 Act I. of 1846 which declare that no person shall be admitted a pleader in the Courts of the East India Company, *unless he has obtained a certificate of good character and qualification in such manner as may be directed by the Sudder Court,** and to the fact that this proviso may frequently prevent Barristers of the Supreme Court, from practising in the Courts of the Zillah

Circular Order No. 120. *Dated 14th March,* 1851. Barristers of the Supreme Court to be admitted to plead in Mofussil Courts, this circular being taken to be a certificate under Act I. of 1846.

* The words italicized were declared by a later enactment to be inapplicable to Barristers and Attorneys of any of the Supreme Courts. See Act XX. of 1853, which, however, together with Act I. of 1846, has been superseded by Act XX. of 1865. The right of an Advocate or Pleader of the High Court to practise in any subordinate Court is declared in Section 45 of the Pleaders' Act just cited.

Judges and their subordinates, the Court are pleased with the sanction of Government, to direct that in every case in which a Barrister of the Supreme Court shall appear in any of the subordinate Courts, this letter shall be taken and understood to be a sufficient certificate under the Act, and shall entitle such Barrister to be admitted without further question as a pleader of that Court. The rule now in force in the Sudder Court which restricts the use of the English language to cases in which the pleaders of both parties are conversant with that language will, of course, be observed in the Zillah Courts.*

POLICE.

Circular Order No. 90.
Dated 25th April, 1845.
Civil processes for apprehension or personal attendance of Police officers, to be issued through the Magistrate.

To the civil and criminal authorities in the Lower Provinces and the Extra Regulation Provinces, the following rule of practice is established with the sanction of the Government. Writs for the apprehension of the person, or for requiring the personal attendance of Police officers under civil processes,† are to be issued through the Magistrate. This rule will not, of course, apply to notices or proclamations, not requiring personal attendance, or to processes which give the party the option of appearing in person or by vakeel.

PUBLIC FUNCTIONARIES.

Circular Order No. 81.
Dated 22nd April, 1825.
Officers of Government may offer suggestions respecting the removal of any imperfection in the law or in its application.

Transmits to the several Courts of Appeal and Circuit for information the accompanying copy of a letter and its enclosures from the Chief Secretary to Government, dated the 24th ultimo, and request that they

* See High Court's C. O. No. 4, dated 15th March, 1869.
† See Section 62 Act VIII, of 1859.

will communicate the same to the several Judges, Magistrates, and Joint-Magistrates within their divisions for information and guidance.

"I am directed by the Right Honorable the Governor-General in Council to desire that you will lay before the Court of Sudder Dewany Adawlut and Nizamut Adawlut the accompanying copy of an extract from the proceedings of Government in the Territorial Department, dated the 10th instant:"

[The extract in question contains a paragraph from a Dispatch of the Honorable Court of Directors, dated 29th September, 1824, in which they "highly approve" of the following instructions conveyed in a letter from the Government of India, Territorial Department, to the Board of Commissioners, dated 22nd April, 1819, paras. 13 and 14.]

Para. 13.—I am directed to request that you will inform Mr. Halhed that his Lordship in Council has derived great satisfaction from the perusal of his report, and highly applauds the motives which led him to enter on the discussion. It is only desirable that all European officers, exercising important civil functions within the Provinces, should be aware that it is the wish and expectation of Government that when such officers shall perceive that anything, either in the general system of our laws or in their practical application, is calculated injuriously to affect the public interests, and shall be satisfied, after communicating with the officer in whose immediate department the evil may exist; that the correction of it requires the interposition of Government; they should not be restrained from bringing the subject forward merely by the consideration that the case does not fall within the scope of their immediate functions.

14.—Such discussions, when prompted by an honest desire of the public good, and conducted in the spirit of candour, cannot justly afford ground of offence, and will apparently be calculated to convey much useful information to Government. It will likewise probably afford many useful hints to the executive officers themselves who must, often in the pressure of public business, overlook, in an attention to their immediate effect, the remoter influence of their operations.

2. The following orders of Government are published by authority for the information of officers of the Government, as to the course to be pursued on the institution of actions against them* for acts done by them in their public capacity.

Circular Order No. 44.
Dated 12th May, L. P. } 1848.
„ *30th June, W. P.* }

Course to be pursued on the institution of actions against officers of Government for their public acts.

* The procedure in suits against Government and public officers is now regulated by Sections 67 to 72 of Act VIII. of 1 859.

Letter from the Secretary to the Government of Bengal to the Superintendent of Police, Lower Provinces, under date the 12th April, 1848.

"I am directed by the Right Honorable the Governor to acknowledge the receipt of your letter No. 583 of the 17th ultimo, in which you draw His Lordship's attention to the position in which Magistrates and other officers of Government are placed, when actions are brought against them in Courts of law for acts done in the discharge of their official duties, in consequence of the system at present pursued of leaving them to defend themselves at their own expense in every case, and only reimbursing them after the conclusion of the trial, if, from the facts then developed, it should appear that they had conducted themselves legally and properly in the matters which occasioned the action.

Position of such officers under present system.

II. "After carefully considering the subject, His Lordship has come to the conclusion that it will be right that the officers of Government so situated should be relieved from the necessity, which must often press heavily upon their means of advancing the funds required for defending themselves against actions, which may often be prompted by malice or litigiousness.

To be relieved from the necessity of advancing funds for their own defence.

III. "With this view His Lordship has determined as the course to be pursued in such cases in future that, on the institution of an action against an officer of the Government for acts done in the discharge of his public duty, he should communicate the fact through the usual official channel, reporting all circumstances which may be necessary to enable the Government to arrive at a decision on the

When an action is instituted, the fact should be communicated for the decision of Government who will advance the funds, if the officer appears to have acted rightly; to be refunded, should the issue of the action prove the contrary.

real merits of the case. If, on full examination into the case, and on a fair and reasonable interpretation of his proceedings, the officer shall appear to have acted rightly, he will be directed to take the necessary steps to defend himself; the Government advancing the funds necessary for that purpose to be refunded, after the issue of the action is known, in case the circumstances then brought to light, should prove the officer to have acted improperly. If, on the other hand, upon examination of his case by the Government, his conduct shall appear to have been clearly wrong, he will be informed that the Government will not interfere; and that he must defend himself at his own charge.

Anticipated results of the rule.

IV. "Under such a rule as this, His Lordship conceives that public officers will not be led to feel that they can fall back on the Government for defence in every case, whether their conduct may have been right or wrong. They will be sensible that they can look for assistance only when they may appear to have entirely deserved it, and therefore their sense of responsibility will remain as keen as heretofore."

Circular Order No. 148.
Dated 29th September 1851.
Public officers not to receive complimentary addresses from parties with whom they have been officially connected.

3. In pursuance of the orders of Government, dated 18th instant No. 2056, it is notified for the information and guidance of all public officers that the practice of receipt by them of complimentary addresses from parties with whom they have been officially connected, is objectionable, and should be discontinued. The servants of Government ought to look to their official superiors for praise when they deserve it, and not to those over whom they are placed in authority.

PUBLIC PAPERS.

Circular Order No. 25.
Dated 2nd July, 1818.
Constructions upon certain provisions of Regulation XXXIII. of 1803, corresponding with Sections 15 to 21 of Regulation III. of 1794.

Transmits for information the accompanying copy of a letter written on this date to Bareilly Provincial Court, containing the construction given by the Sudder Dewany Adawlut to some of the provisions of Regulation XXXIII. of 1803, corresponding with Section 11 to 21 of Regulation III. of 1794.

To the Provincial Court of Appeal for the Division of Bareilly.

I am directed by the Court of Sudder Dewany Adawlut to acknowledge the receipt of a letter from your 3rd and 4th Judges, dated the 3rd ultimo, requesting to be informed of the construction given by the Sudder Dewany Adawlut to the Regulations in force upon the following points :

I.—Are native officers in the Revenue Department or in the Department of Customs, who may have been sent to jail under Regulation XXXIII. of 1803, (extended to the officers of Customs by Section 36 Regulation IX. of 1810) for papers demanded from them, entitled under Section 6 of that Regulation, to be released from jail upon giving security to institute a suit to contest the demand, or is the Section quoted applicable only to officers confined for money ?

II.—Must a petition of plaint preferred, in a Court of civil justice, by a native officer in confinement under Regulation XXXIII. of 1803, against the Collector at whose instance he is confined denying the justice of the demand made by him, be transmitted to Government through the Board of Commissioners, conformably to Regulation II. of

1814* and the orders of Government received thereon, before the Court can proceed to try the justness or otherwise of the remand ?

III.—In what manner is it intended that suits instituted against a Collector of Revenue or a Collector of Customs under the Regulations above quoted, *viz.*, Regulation XXXIII. of 1803, should be tried as summary suits, or as regular suits ?

2. On the first point above-mentioned the Court are of opinion that the spirit and intention of Section 6 Regulation XXXIII. of 1803, are applicable to persons confined at the instance of a Collector, on account of a demand for public accounts, or other official papers, in like manner as is provided by the Section referred to, in the case of persons confined on account of a claim for public money.

Persons confined at the instance of a Collector, on account of a demand for public papers, may be released on giving security to institute a suit to contest the demand.

3. Under the general terms of the first Clause of Section 3 Regulation II. of 1814,* the Court are of opinion on the subject of the second question that all petitions of complaint against a Collector of the land revenue or customs preferred by persons confined under the provision of Regulation XXXIII. of 1803, must be transmitted, in the first instance, to the Board of Commissioners ;† but that the party in confinement should be discharged at any time during the reference, on his giving the security required by Section 6 of the Regulation.

All petitions of plaint against a Collector by persons so confined must be transmitted in the first instance to the Board of Commissioners. Party in confinement to be discharged on giving security.

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* Repealed by Act X. of 1861.

† *Vide* Sections 67 to 72 Act VIII. of 1859, which now regulate the procedure in all suits against Government officers.

4. Under the declaration contained in Section 8 Regulation XXXIII. of 1803, *viz.*, that the rules in Regulation XXVII. of 1803, regarding suits instituted against the Collector for sums demanded or received by him, shall be applicable to suits instituted against the Collector under the preceding Section of Regulation XXXIII. of 1803, the Court are of opinion upon the third point referred by you that suits so instituted must be received and proceeded upon as regular suits. This construction of Section 21 Regulation III. of 1794, (which corresponds with Section 8 Regulation XXXIII. of 1803,) has been already communicated, on the 29th December last, to the Benares Provincial Court, in answer to a reference from that Court.

Suits instituted against the Collector under Section 6 Regulation XXXIII of 1803, must be received and proceeded upon as regular suits.

RECEIVER.

In serving notice of action through the Judges of Her Majesty's Supreme Court, under Act XXIII. of 1840, on the Receiver of that Court, the civil authorities in the Lower and Western Provinces are directed to attach to each notice a memorandum, in ordinary language and without regard to precise form, of the substance and objects of the plaint, in order that the Receiver, when served with the notice, may take the orders of the Supreme Court for defending the suit.

Circular Order No. 150.
Dated 24th October, 1851, *L. P.*
„ *14th January*, 1852, *W. P.*
Notice of action when served on Receiver to be accompanied with a memo. of the substance and objects of the plaint.

2. In suits instituted before the Uncovenanted Judges, they will send the plaints, for the abstracts of them to be made as above by the Zillah Judge, for transmission with the notice for service under Act XXIII. of 1840.

RECORDS.

The Court have reason to believe that it is the practice of Moonsiffs to deposit their records at the nearest thannahs when they are absent from their stations during the vacations, or at any other time. As this is an objectionable practice, the Court are pleased to direct that except at the vacations, Moonsiffs, who are about to avail themselves of leave of absence, were to leave their records in the custody of their Omlah, and that at the vacations, when the Omlah are permitted to go to their homes, they will pack up the records in boxes, sealing the boxes in the usual manner, and placing a guard of peons over the cutcherry during their absence.

Circular Order No. 121, *Dated 9th January*, 1846. Records in whose custody to be left when Moonsiff is absent on leave, and how to be secured during vacations.

2. The Court, having had under consideration Circular Orders Nos. 81 and 112, dated 1st February, 1833 and 1st August, 1834, which contain the present rules regarding the destruction of old records, are of opinion that there are numerous papers connected with the entire record of a civil suit, the retention of which after final decision, (having no bearing upon the merits of the case) is superfluous, and only tends to overburthen the record room, and entail both labour and expense in their preservation.

Circular Order No. 167. *Dated 3rd March*, 1852. Rules as to destruction of old records. Retention of certain papers superfluous.

3. It appears to the Court that, as suggested by Mr. Hathorn, Judge of Sarun, in his letter No. 214, dated 14th July, 1851, the papers of a civil suit may be divided into two *nuthees* (A and B) as they are filed. The one including papers destined for preservation for 12 years, and the other for destruction after the expiration of one year from the date of the final decision.

Papers of a suit to be divided into two *nuthees* as they are filed, *viz.*, A destined for preservation 12 years, and B for destruction after one year.

The former (A) would, of course, comprise all papers and documents required either *in appeal*, or for future reference in subsequent suits bearing upon the identical property, or referring to the same parties, and would include.

(NUTHEE A)

1. The original list of papers.
2. The entire pleadings.
3. All documents filed by parties, including *razeenamah* and *solenamahs*.
4. All the oral evidence taken in Court.
5. The Ameen's report and map on local inquiry.
6. Petitions of third parties.
7. Arbitration awards.
8. The Court's final decree.
9. The decree-holder's application for execution, with schedule of property.
10. The Court's final order in execution of decree.

NOTE.—"Sooruthals" in *ex parte* cases need not be preserved, because the vernacular decree itself should contain all such particulars.

Certificates, in regard to the state of documents when filed, are also considered useless, *after* a final decision in the *Appellate* Court has been passed.

Petitions of claimants in execution, after final execution of the decree, are, for the same reason, deemed superfluous.

Papers relating to attachment, under Regulation II. of 1806,* before or after the decision, in like manner need not be retained after the final award and execution of the decree.

So also copies of Collector's *proceedings* under Section 30† Regulation II. of 1819, (the originals of which are forthcoming in the Collector's office), need not be kept.

* Repealed by Act X of 1861; attachments being now regulated by Act VIII. 1859; Sections 81 to 91 and Chapter IV.

† Repealed by Section 1 Act VII (B. C.) 1862 as regards Bengal.

(NUTHEE B)

Is intended to contain papers exclusively appertaining to the Court's *procedure*, having no reference to the *merits of the case*, which, after final decision in the remoter Court of Appeal, or after the time for preferring a regular or special appeal has passed away, cannot be of the slightest use, *viz.*,

1. *Notices to parties* with their returns.

2. "*Vakalutnamahs*" (in which pleader's fees have been paid.)

3. "Subpœnas," "Sooruthals," &c.

4. Preliminary proceedings of the Court under Sections 10* and 12* Regulation XXVI. of 1814.

5. Interlocutory proceedings of the Court.

6. Ameen's papers (*excepting* final report and map.)

7. "*Bywustahs*" and "*futwas*" (after registration in the office) &c.

NOTE.—It is not intended that any papers, such as "*challans*" or *receipts for money* paid in execution of decrees appertaining to the *judicial treasury*, or the *receipts for original documents returned* to parties after decision, should be destroyed.

These vouchers should be retained for 12 years, which period would bar any subsequent suit which might be preferred by parties connected with such vouchers.

4. The Court therefore direct that suits, instituted from the 1st of July next, be divided as above shewn, and that papers appertaining to the "*nuthee* A" be destroyed after 12 years from the date of decision, in the manner indicated in the Circular Orders above referred to, while those of "*nuthee* B" should be kept only for one year.

Division when to commence Papers of "*nuthee*" A to be destroyed after 12 years, and of B, after one

* Repealed by Act X. of 1861. See Sections 25 to 143 C.P.C., which now regulate such proceedings.

5. The Zillah Judges will direct their record-keepers, as they have leisure to divide the decided cases now in the record-room upon the same principle, in order that the papers in them not to be kept beyond a year, may be destroyed with as little loss of time as possible. The progress made in the destruction, in this manner, of old and useless records should be noticed in the annual reports.

Old cases to be similarly divided. Progress to be reported in annual reports.

6. Special reports need not be made of the destruction of records, when carried out strictly in pursuance of the instructions in paragraph 3 [4] of this letter.

7. In continuation of Circular Order No. 167, dated 3rd March last, the Court direct the destruction after one year as ordered in regard to *nuthee* B of the following papers of miscellaneous cases:

Circular Order No. 181. *Dated* 22*nd June*, 1852. Directs the destruction after one year of certain papers of miscellaneous cases, as specified

1. Monthly and annual statements of Lower Courts.
2. Monthly returns of documents registered by Cazees.
3. Monthly statements of the ferosh Ameens.
4. Petitions for review of judgment which have been rejected.
5. Summary appeals from orders of Lower Courts, rejecting or dismissing original suits on any default.
6. Petitions of appeal preferred from interlocutory orders in regular suits.
7. Roobokarees of the Lower Courts forwarding notice and proclamation, &c.
8. Roobokarees from other districts forwarding notice, &c.
9. Roobokarees from Lower Courts calling for cases for reference which have been disposed of and filed in the Record office.
10. Petitions of plaint adjusted by razeenamah.
11. Petitions of appeal remanded for re-trial, copies of which have been filed in the cases.

12. All petitions of appeal from orders imposing fines.

13. Petitions under Act XVI. of 1845* for re-admission of appeals.

The final orders in all these cases should, of course, be kept for record.

14. Petitions under Act IX. of 1839* and Sections 5 and 12 Regulation XXVIII. of 1814.*

15. Petitions of insolvents under Section 11 Regulation II. of 1806.†

16. Receipts and proceedings from Sudder Dewany Adawlut and Special Commissioner.

17. Proceedings and reports from Principal Sudder Ameens, Sudder Ameens, Moonsiffs, Nazirs, and other functionaries.

18. Proclamations from Collectorate regarding sales, butwarahs, transfer of names, settlement of Abkaree, &c.

19. Ditto from Magistrates regarding ferries.

20. All applications for leave: ditto from candidates for employment.

21. Applications for transfer of suits.

22. On reconsideration the Court direct the transfer of No. 6 Ameens papers ("excepting final report and map)" from schedule B to schedule A of the above Circular Order, *i.e.*, to the list of papers to be preserved for 12 years.

Ameen's papers to be transferred from schedule B to schedule A.

8. Observes that the division into Nuthees A and B of the papers of cases which have been more than one but less than 12 years in the office, is to be proceeded with, as leisure will permit, so that those in B may at once be destroyed in cases in which one year has elapsed from the date of the final decision. Those in A should be kept till the end of the 12th year from that date, when such papers as the above Circulars indicate for

Division into A and B Nuthees to be proceeded with, as leisure permits.

* Repealed by Act X. of 1861.

† Repealed by Act X. of 1861. See Sections 273 to 275 Act VIII. of 1859.

perpetual retention* being extracted, the remaining papers may be destroyed.

9. Forwards to Civil Judges copy of a letter from the Judge of Backergunge No. 36 of the 25th ultimo, and of the reply thereto No. 1072 of this date, in order that the plan authorized in Backergunge may also be followed in arranging the records of their Courts, under the orders now in course of execution on that subject.

Circular Order No. 15.
Dated 4th July, 1853.
In the list appended to each Nuthee, the papers to be *preserved*, should be noted by some distinguishing marks not easily erased.

(COPIES.)

No. 36.

To the Register, Sudder Dewany Adawlut.

SIR,

I WAS called upon by the Court in their Resolution No. 475 of the 28th March last to report the progress made in the arrangement of the records of my office, according to the new rules, as circulated by the Court in their letter No. 5 of the 3rd March, 1852.

2. So little had then been done that my report would have gone up nearly blank. I thought it best, therefore, to delay replying to the Court's Resolution till I could make a report of some progress. At the same time I may explain why so little was at first effected, and how I have been able to make great progress latterly.

3. The extra Mohurrirs were appointed on the 17th November, 1852; their plan was at first to prepare a list of every paper to be burnt and a list of every paper to be retained. The former was placed weekly before the Judge, who then ordered the distinction of the papers, and the latter was placed with the records of the paper intended to be preserved For some time, or to speak more particularly, up to the 1st March last, it did not occur to me that both the lists were equally useless.

4. Every Nuthee has a list appended to it of every paper forming the record. In this list instructed the Mohafez to note by some distinguishing mark the papers extracted from each Nuthee for destruction. Thus the object of the two

* The "above Circulars" were those of 1st February, 1833 and 1st August, 1834, which have been superseded by C. O No. 18 of 26th August, 1853. The only papers for perpetual retention are the final decisions and the documents on which it was based.

separate lists was accomplished at once, the old list sufficed to shew the papers of the original record as well as those taken from it to be burnt which is all that is required.

5. Since the introduction of this plan, the business has proceeded rapidly, and I trust the annexed paper, shewing what has been accomplished up to this date, will be deemed satisfactory.

6. What remains to be done will, I expect, be completely accomplished by September next, up to which period I have applied for the sanction of Government for the rentention of the extra Mohurrirs.

I have, &c.,

(Signed) C. STEER,
Judge.

A list shewing the nature of the records and their quantity which have been now arranged, after the extraction and destruction of the papers not intended for preservation.

CASES.	BUNDLES OR BUSTAHS.
Cases decided by the Moulvee and Sudder Ameen, from 1806 to 1832	43
Ditto ditto by Pundit and Sudder Ameen, from 1806 to 1832 ...	41
Ditto ditto by the former Sudder Ameens, from 1815 to 1832 ..	35
Ditto ditto by the Registers, from 1803 to 1826	61
Ditto ditto by the Moonsiffs of Burrisaul, from April, 1833 to December, 1851	215
Ditto ditto by the Moonsiffs of Cowcally, from ditto ditto ...	140
Cases decided by the Moonsiffs of Bowfell, from May 1833 to December, 1851	131
Ditto ditto of Mendeegunge, from 1833 to 1851	114
Ditto ditto by the present Sudder Ameen, from July, 1835 to December, 1851	50
Ditto ditto by the Principal Sudder Ameen, from January, 1833 to December, 1851	139
Ditto ditto by the Additional Principal Sudder Ameen, from December, 1849 to September, 1850	7
Appeals from Moonsiffs disposed of by the Principal Sudder Ameen and Additional Principal Sudder Ameen from 1839 to 1851 ...	116
Ditto from Sudder Ameens disposed of by the Principal Sudder Ameen, from 1842 to September, 1845	10
Ditto from Moonsiffs disposed of by the Judges from 1833 to 1851...	66
Appeals from Registers, Principal Sudder Ameens, and Sudder Ameens disposed of by the Judges from 1838 to 1851	67
Suits for money "(nukdeat") disposed of by the Judges from 1831 to 1840, (arranged by the former Mohafez)	32
Appeals in the above description of suits disposed of by the Judges from 1831 to 1840 (arranged by the former Mohafez) ...	61
Execution of decrees in suits for money disposed of by the Judges, from 1831 to 1840, (arrange by the former Mohafez)	30

Cases for review of judgment disallowed by the Judges from March, 1833 to the end of 1850	3
Periodical statements of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs from 1831 to 1851	21
Ditto ditto of the Mofussil cases, from 1831 to 1851	21
Ditto of the regular Ameens, from 1846 to 1851 . .	6
Total ...	1,409

Besides the above, there have been burnt ten bags of papers relating to money suits decided by the former Moonsiffs, prior to the passing of Regulation V. of 1831.

(Signed) C. STEER,
Judge.

No. 1072.

To the Judge of Backergunge.

SIR,

The Court, having had before them your letter No. 36 of the 25th ultimo and its enclosure, direct me to inform you that they consider the progress made under your direction in the arrangement of the records of your Courts to be very creditable.

They would, however, wish that the papers *preserved*, and not those *destroyed*, should be noted on the old lists by some distinguishing marks of a kind which cannot be erased without much hazard of detection. This will obviously be preferable to noting the papers destroyed by a distinguishing mark, since such marks could readily be added hereafter on any occasion of the surreptitious abstraction of a paper. The erasure of marks carefully made in the lists opposite papers *preserved* would be much more difficult.

You will proceed on this plan in future, and you will also have all the papers preserved in the records already arranged, carefully noted on the old lists with the same mark that will be affixed to the papers preserved in the lists of records that still remain to be arranged.

10. In future, Zillah Judges and the Courts subordinate to them will be guided by Circular Orders No. 167 of 3rd March, 1852, No. 181 of 22nd June, 1852, and No. 182 of 30th June, 1852; pragraph 2, with regard to the preservation and destruction of records which have not been 12 years in their offices, and with regard to cases which have been more than 12 years in their offices, everything will be destroyed, except the final decision

Circular Order No. 18.
Dated 26th August, 1853.
Zillah Judges to be guided in future by foregoing instructions with regard to records not 12 years old, and with regard to others everything to be destroyed except final decision and the documents on which it was based.

and the original documents, (or copies of such documents filed by the parties) on which the decision was based. This order will be applicable to the records of the Courts of the Moonsiffs as well as of those of the higher judicial officers.

Destruction to be effected by burning.

11. In destroying records the Court particularly direct that effectual care be taken to have them burnt under such precautions as will make it certain that the order has been duly carried into effect.

Circular Order No. 95.
Dated 16*th May*, 1857.
Useless records how to be utilized.

12. Forward for information and guidance the accompanying extract paragraph 43 from a Despatch No. 9 of 1857, dated the 14th January, from the Honorable the Court of Directors, relating to the destruction of the useless records of the several Judges' Courts.

EXTRACT.

Burdwan Division.

This plan "which has been adopted in some Zillahs of the North-Western Provinces with success, is equally applicable in Bengal, care being taken that the records are thoroughly destroyed before they reach the prisoners' hands.

(Sd.) C. T. BUCKLAND,
Junior Secy. to the Govt. of Bengal.

Circular Order No. 45.
Dated 12*th May*, 1854.
Paper properly prepared to be introduced for purposes of record.

13. The Court forward to civil and criminal authorities copy of letter from the Government of Bengal No. 1004, dated 27th April with its enclosure, and requested that they will take measures to introduce into all the Courts subordinate to them the use of paper properly prepared, in the manner indicated, for the purposes of record.

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* "Useless records of the several Judges' Courts to be made over to the Magistrates for the purpose of making paper."

14. It is suggested that Zillah Judges should, in concert with the Magistrates, make arrangements for a regular supply of jail-made arsenicated paper to the several judicial and Police officers stationed in the interior of their districts, and where the local jail may not be able to furnish a sufficient quantity, it may perhaps be possible to procure it from an adjacent district without greatly enhancing the cost. It might be desirable to encourage private paper-makers, but proper precautions should be taken to prevent the substitution of turmeric for yellow arsenic, the appearance being similar, but the difference easily discernable to the smell or taste.

Arrangements for a supply of jail made arsenicated paper. Precautions against the substitution of turmeric for yellow arsenic.

15. Until a local supply of properly prepared papers can be secured, the Court enjoin that all papers used by the officers in the Civil Courts, which are to form part of Nuthee A, under Circular Order No. 167, dated March, 1852, shall be of European or Serampore manufacture.

Until properly prepared paper is supplied—Europe or Serampore paper to be used for Nuthee A.

COPIES.

No. 1004.

From the Under-Secretary to the Government of Bengal, to the Registor of the Sudder Court, dated Fort William, 27th April, 1854.

SIR,

I am directed by the most noble the Governor of Bengal to forward herewith copy of an extract (paragraph 55) from a report by Mr. H. Ricketts, on the district of Balasore, dated the 12th December last, and to request that the Sudder Court will issue such instructions to the several officers subordinate to them, as shall effectually prevent the use of any but properly prepared paper for the purpose of record.

2. A Circular has this day been addressed to all officers in charge of jails on the subject of the preparation of paper with materials which shall render it proof against the attack of insects. This will remove all difficulty in the

way of a strict compliance with the above orders.

I have, &c.,

(Sd.) HODGSON PRATT,
Under-Secy. to the Govt. of Bengal.

Extract from a Report by Mr. H. Ricketts, on the district of Balasore, dated 12th December, 1853.

Para. 55.—The prisoners of Cuttack and Balasore are chiefly employed in making paper, which is extensively used in all the offices. This paper is sized with a preparation of rice in which worms will breed, and in a few years not only will the records of the present time be eaten up, but the old papers will be injured Either another sort of sizing should be used, or arsenic should be mixed with sizing, or the public officers should be positively prohibited from using the jail paper, except for covers of letters and such purposes. They should not even be permitted to use it for records which are not to be preserved beyond a few years, for the worms spread; one infected bundle will cause the destruction of a whole shelf of papers. I have said that I found some of the Balasore records much worm-eaten, so much that it will be necessary to copy them at a considerable expense. In all the bundles it was evident that the worms had originated in some very coarse paper used by the Deputy Collectors employed in the measurement: possibly the generation of worms might be prevented by boiling the sizing before it is used. As paper-making is now becoming very common in the Bengal jails, it appears well worth while to cause careful inquiry to be made, and either to prohibit the use of rice sizing or to mix with it arsenic, or some other equally effectual poison: blue vitriol will keep away worms; but will itself in the course of years destroy the paper by making it so brittle that on being handled, it breaks to pieces.

(Sd.) HODGSON PRATT,
Under-Secy. to the Govt. of Bengal.

16. With the sanction of Government, it is notified for the information and guidance of all public officers at the head of establishments containing records that in future any officer who permits the records of his office to fall into disorder shall be held responsible to Government for the expenses incurred in their re-adjustment, and any functionary receiving charge of an office, the records of which may be in disorder, or so-

Circular Order No. 232.
Dated 4th November, 1842.
Responsibility of heads of establishment in connexion with disorder in the records; and of officers receiving charge for disorder or unmethodical arrangement.

unmethodically arranged as to prevent the ready production of papers when called for, who shall fail to make a timely report of their estate, will be similarly held answerable for the outlay attending the assortment of the records.

17. The Court are pleased to issue the following remarks and orders regarding the transmission, by the several subordinate Courts, of the records of monthly decisions to the sudder station.

Circular Order No. 76. Dated 17th January, 1845.
Transmission by subordinate Courts of records of monthly decisions to sudder station.

18. By Clause 8 Section 10* Regulation XX. of 1817, Police darogahs are required to forward by the *thannah* dawk, or by their *burkundazes*, as "*occasions may offer*," papers sent to them by the subordinate Civil Judges for that purpose. On the other hand, the transmission of the records of monthly decisions is directed to be periodically made, and cannot, if the rules prescribed by Circular Order Sudder Dewany Adawlut No. 49, dated 20th September, 1839, are to be enforced, be allowed to depend on the occasional opportunity which a Police darogah may think fit either to improve, or, on the other hand, to leave unheeded. Independently of this the Court observe the increased bulk of the records of the subordinate tribunals arising from the enlargement of their powers, and the consequent accession of judicial business before them, opposes a serious obstacle to the employment of the thannah dawk, as a means of conveying them to the sudder station.

Duty of Police darogahs.

19. The Court, however, are not disposed to dispense with the attendance of a Police burkundaz which is authorized by law, and affords some security for the safe arrival of papers in

Records when to be sent to the nearest thannah, and by what means, in whose charge, and by whom to be forwarded thence to the sudder station.

* Repealed by the Bengal Council's Act VIII. of 1862, so far as the Section relates to the provinces and districts subject to the Government of Bengal.

transit, and they are pleased accordingly, with the permission of Government to direct that the subordinate judicial officers forward the records of monthly decisions by a specified date to the nearest thannah, for transmission to the sudder station, taking a receipt from the darogah, or, in his absence, from the head officer present at the thannah. The judicial officers will provide the requisite coolies for the conveyance of the records, and indent on the Judge for the expense incurred thereby. It shall be the duty of the Police darogah to despatch the papers in question without delay to the suddor station, under chargo of a burkundaz. A challan, under the signature of the judicial officer, exhibiting the date of transmission to the thannah, and the number of misls will accompany the records, and serve to show whether there has been any delay on the part of the Police in forwarding them to the sudder station.

Zillah Judge to determine the period within which the records should be delivered to darogah.

20. The Judges are requested to determine the period within which each Moonsiff shall be required to have his records of monthly decisions delivered to the Police darogah with due advertence to the necessity of enforcing the provisions of Circular Order Sudder Dewany Adawlut No. 49, dated 20th September, 1839,* and with reference to the distance of each receiving thannah from the sudder station.

* By para. 9 of that C. O. (No. 49 of 1839) Sudder Ameens and Moonsiffs were required to forward along with their regular returns of business "reports of suits decided, with the original papers and documents of each suit;" and the same course was to be followed by the Principal Sudder Ameen in regard to all suits not exceeding Rs. 5,000 in amount. By para. 10 "the same officers were required with the records of regular suits to transmit also for deposit the records of all cases of execution of decrees and other miscellaneous cases that may have been disposed of the preceding month, with exception to cases of enforcement of decrees struck off the file in that period, in which an application may have been made to sue out execution anew, prior to the date on transmission, in which event they will send, in lieu of the record, copies of the order striking the case off the file, of the petition for revival and of the proceeding thereon." By para. 13, suits decided by the Principal *Sudder Ameen* exceeding Rs. 5,000 in value, were excepted from the above rule, and the records of such cases ordered to be retained for period of six months, so as to enable him to execute any orders issued thereon by the Sudder Court, after which they were to be forwarded for deposit in the Judge's office. The usual report submitted monthly was to include these decisions also.

REPORTS (ADMINISTRATION.)

In furnishing the report as above, * Zillah Judges will distinctly advert also to the following subjects:

Circular Order No. 12. Dated 25th April, 1853.
Subjects to be noticed in annual reports.

State of the Buhee-yad-dashts.

I. The state of the *Buhee-yad-dashts.* †

Of the records.

II. The state generally of the records and *the years* up to which they have been duly arranged according to the Court's several Circulars on that subject. ‡

Of the vernacular *Gazettes.*

III. The state of the vernacular *Gazettes*, and if they are regularly filed and preserved by the Uncovenanted Judges. §

Of the securities.

IV. The security of the Treasurer, Nazir, &c. ¶

REPORTS.

Requests that the Judges in the Lower Provinces and the Commissioner of Chota Nagpore will invariably report to the Court the date on which a newly appointed Moonsiff takes charge of his office.

Circular Order No. 128. Dated 26th July, 1858.
Date of a new Moonsiff taking charge to be reported to the Sudder Court.

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* The preceding paras. (1 & 2) gave instructions as to the annual statements and prescribed a form for the Administration Report; but those orders have been entirely superseded by the High Court's C. O. No. 32, dated 8th November, 1870 as regards *the statements* and C. O. No. 4, dated 2nd February, 1871 as to the *annual report.* In addition to the above subjects, the High Court requires mention to be made of the state of the Judge's Library and of the judicial buildings.

† The "Buhee-yad-dusht" has been superseded by the *Diary* or *Roz-namchah* prescribed by the High Court's C. O. No 2, dated 14th February, 1870 which, in so far as regards the Courts subordinate to the district Judge, require to be reported upon "at every inspection" of such Courts by the said Judge.

‡ See RECORDS paras. 2 to 5 *et seq* at pp. 161 to 169 of this work.

§ See BOOKS, paras. 3 to 5 at pp. 39 to 41 *ibid*: also *Gazettes* at pp. 94 & 95.

¶ See SECURITIES, paras. 1 to 4, pp. 175 to 177.

SEALS.

Circular Order No. 165.
Dated 8*th Jan.*, 1836, *L. P. &* 18*th March*, 1836, *W. P.*
Seals, their size, shape, and inscription.

In pursuance of the orders of Government, the Court request that Zillah Judges will cause brass seals, one inch and a half square, with the inscription in Persian and Bengali or Nagree according to the current language of the district to be prepared, and delivered to the *Moonsiffs** in your jurisdiction, and charge the expense in your contingent bill.

مہر عدالت منصف فلان ضلع فلان

মোহর আদালত মুনসিফ ফলান জিলা ফলান

মহর অদালত মুনসিফ থানা ফুলান জিলা ফুলান

SECURITIES.

Circular Order No. 84.
Dated 23*rd September*, 1831.
Revision of securities of responsible officers.

1. In pursuance of the orders of Government transmits to the Provincial Courts of Appeal, Commissioners of Appeal and Circuit, Judges, Magistrates, and Joint-Magistrates the accompanying extract (para. 36) from a letter from the Honorable the Court of Directors, dated the 2nd February last, relating to the periodical revision of the securities of native officers entrusted with public money.

* By Circular No. 175, dated 15th April, 1836 (L. P & W. P.), the word "thannah" was ordered to be omitted from the above inscription. With Circular No. 126, dated 18th December, 1840, the Court forwarded for the Principal Sudder Ameens and Sudder Ameens in the Lower Provinces "office seals of a uniform size, shape, and inscription." The Bengal Civil Court's Act 1871 (Section 14) enjoins the use by every Court of a seal of such form and dimensions as are for the time being prescribed by the local Government. But none has yet been prescribed.

2. The Court observe that security should be taken from treasurers, *Nazirs*, and other officers, who, in the discharge of their public duty, have charge of money or property, whether public or belonging to private individuals, and that the sureties should bind themselves to make good all losses sustained by the default or fraud of the officer for whom they are bound. With regard to the amount of property to be pledged by the surety, and entered in the schedule at the foot of the bond, the Court observe that it must be regulated according to the circumstances of each case, and the amount or value of the money or property which may be likely to be left in the hands of the officer from whom the security is required, and that the surety should bind himself not to sell, or in other manner alienate the property in question until he be relieved from his responsibility.

Security to be taken from officers in charge of money or property. Public or private sureties how to be bound. Amount pledged how to be regulated.

3. The Court desire that in taking security in future the civil and criminal authorities will follow this principle, and particularly be careful to ascertain the efficiency of the security. They also direct that the authorities addressed will cause the sufficiency of the security of the officers on their establishment, who are required to furnish it to be carefully revised during the last week in December of each year, and that they will submit it a report of the result of the revision *according to the* accompanying form :

Sufficiency of the security to be ascertained, and its efficiency reported upon in the last week of every year.

Extract of a letter from the Honorable the Court of Directors, dated the 2nd February, 1830.

Para. 36.—We think it would be proper for you to require after short intervals, a periodical revision of the efficiency of the securities of officers to whose charge money is entrusted under any sort of public guarantee, direct or implied.

Form.

Report of the result of the inquiry as to the sufficiency of the security given by the officer of the Court made in the month of December, 1831, under the Circular Order of Sudder Dewany and Nizamut Adawlut, dated the 23rd September, 1831.

Name and designation of the officer required to give security.	Amount of Security required	Names of the sureties with the date of their engagement.	Names of new securities, the old sureties having been changed.	Remarks.

4. The Court forward to the several civil and criminal authorities in the Lower and Western Provinces, for their information and guidance the accompanying extract (paragraphs 4 and 5) of their resolution of this date, on the revision of the securities of the treasurers and other officers entrusted with public money for 1835.

Circular Order No. 198.
Dated 16*th December*, 1836,
L.P., 20*th January*, 1837, *W.P.*
Report of revision to be accompanied with certificate of revision in prescribed form.

Extract from the Resolution of the Courts of Sudder Dewany and Nizamut Adawlut, under date the 16th December, 1836.

Para. 4.—The officers who are required to report on the security of their subordinates have omitted generally to submit their report with punctuality, and very few have given any distinct opinion as to their validity or otherwise. The Court desire that they be called upon to submit the report of the revision of the securities (required to be made by the Circular Order of the 23rd September, 1831, No 34) on or before the 1st February, 1837, and that they insert at the foot of

the form prescribed by that Circular (which, for the convenience of record, should be uniformly engrossed on a sheet of foolscap paper) the following Certificate :—

"Certified that I have revised the securities of the officers above-mentioned, and that I consider them good and sufficient."

(Sd.) A. B.,

Judge or Magistrate (as the case may be.)

5. The attention of the judicial officers will be called to the Circular Order of the 3rd July, 1835, No. 150, and they will be informed that should they neglect to furnish this indispensable information, and any embezzlement take place, their conduct must be reported to Government.

Embezzlement occasioned by neglect in furnishing the above information, to be reported to Government.

6. Transmits to the civil and criminal authorities Lower and Western Provinces, for information and guidance, the accompanying extract from a letter from the Secretary to the Government of Bengal, dated the 16th ultimo, regarding the security required from native officers who hold situations of pecuniary responsibility.

Circular Order No. 150. *Dated 3rd July,* 1835, *L. P. and W. P.*

EXTRACT.

"The object of the Honorable the Court of Directors will be sufficiently attained, if the Court satisfy themselves annually that the officers subject to their jurisdiction have severally instituted the necessary inquiries to establish the validity of the security furnished by those of their subordinates, who hold situations of pecuniary responsibility. But it should be distinctly explained to all the functionaries who are required to furnish this annual report, that when they vouch for the sufficiency of the security in

Inquiries as to validity of security. Responsibility of functionaries vouching for its sufficiency.

each case, they thereby render themselves responsible for the safety of the public funds committed to the charge of their ministerial officers, and that they will be held accountable for any insufficiency of security which may subsequently be experienced."

7. To the several civil and criminal authorities in the Lower and Western Provinces. With reference to the provisions of Act I. of 1843* which enact that henceforward all registered documents shall take precedence of others not so attested, the Court conceive that a due regard to the security of the interests of Government requires that all security bonds executed by the securities of treasurers, *Nazirs*, and other ministerial officers attached to the judicial Courts, should be duly registered in conformity to the conditions of the enactment cited, and are accordingly pleased to direct that all such and other documents likewise of a similar character by the annulment or repudiation of which the interests of Government are liable to be injuriously affected shall be subjected to registry ; (that the civil and criminal authorities in the Lower Provinces shall satisfy themselves that the lands, to which the registerd security deeds relate, have not been already conveyed away by any previously registered deeds),† and that such registration (and scrutiny) shall be deemed an indispensable preliminary to their acceptance as good and valid engagements. The fees attendant on this process must be defrayed by those from whom security is demanded, and whose tenure of office is dependent on their compliance with such requisition.

Circular Order No. 15. Dated 2nd May, 1843, L. P. & W. P. Security bonds executed by sureties of treasurers, &c., to be duly registered. The requisite fees to be defrayed by the officers in question.

* Modified by Act XX. of 1843 which was repealed by Act XVI. of 1864, which again was repealed by Act XX. of 1866, which has been repealed by the Indian Registration Act of 1871. By Clause 7 Section 18 Act VIII. of 1871, the registration of bonds is optional, and Section 50 does not include *bonds* among the registered documents of this class which take effect against unregistered documents.

† The Clauses within brackets were added by the Presidency Court.

To the civil and criminal authorities in the Lower and Extra Regulation Provinces.

8. The Court of Sudder Dewany Adawlut promulgate the sub-joined Resolution for the guidance of the civil authorities and the information of all parties interested.

Circular Order No 134 *Dated* 19*th June, W. P.* 17*th July, L. P.* } 1846.
All security bonds, under whatever law or order required, shall be registered as a *sine qua non* to their acceptance.

Resolution of the Court of Sudder Dewany Adawlut.

With reference to the provisions of Act XIX. of 1843,* and with a view to obviate the disputes which not unfrequently arise, owing to the alleged alienation of property pledged as security in civil cases, the Court resolve :—

That all security bonds, for whatever purpose the security may be required, whether for costs of respondents† in appeal to the Queen in Council, or under the terms of Clause 1 Section 5 Regulation II. of 1806,‡ or any other law or authoritative order shall be duly registered according to the rules now in force, or which may be hereafter enjoined, and that the registration of such bonds shall be deemed indispensable to their acceptance as good and valid securities.

9. The Court, under the orders of Government No. 1704, dated 18th instant, publish for general information the sub-joined Resolution of the Government of India in the Financial Department :

Circular Order No. 156. *Dated* 24*th November*, 1851.
Option as to mode of preparation of security bonds, and discretion as to their acceptance.

RESOLUTION.

The President in Council has no objection to its being left optional with parties nominated to offices under Government

* Repealed by Act XVI. of 1864, registration being now effected under the provisions of Act VIII of 1871.

† See Section 342 Act VIII. of 1859.

‡ Repealed by Act X of 1861.

requiring the execution of a security bond to have that bond prepared by their own advisers. It will be at the discretion of heads of offices to accept such bonds on their own responsibility, or to refer them for approval on the part of Government to the law officers of the East India Company.

10. The amount of security to be demanded from Moonsiff's Nazirs is fixed at Rs. 1,000 ; but this sum is liable to enhancement or reduction, according as inquiry *and experience may* show to be expedient.

Circular Order No. 118. *Dated* 17*th November*, 1845, *L. P. & W. P.* Security from Moonsiff's Nazirs.

11. By Clause 2 Section 13* Regulation XXVI. of 1814 persons who may have become security for the execution of decrees of Court,† or for staying the execution of judgments of Civil Courts‡ are prohibited from transferring, or causing to be transferred, by sale, gift, or otherwise any land or other immoveable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled. Instances have, however, occurred in which the Court have reason to believe that persons have unknowingly and unwittingly purchased such property, and under the present mode of conducting the proceedings in such cases, individuals have no effectual means of ascertaining whether the property, they propose to purchase, has, or has not, been so pledged.

Circular Order No. 198. *Dated* 17*th February*, 1837 (*L. P. & W. P.*) Fraudulent transfers of property pledged as security for executing decrees, or staying execution.

12. In order, therefore, to enable individuals to ascertain whether property is hypothecated to the Courts, and with a view to

Rules to check such transfers.

* Repealed by Act X. of 1861.

† See Sections 81 to 83 Act VIII. of 1859.

‡ See Sections 338 and 339 Act VIII. of 1859.

check any fraudulent transfers of the same, the Court have considered it proper to adopt the following rules :—

Nazir's *kyfeut* to recapitulate the contents of title-deeds of immoveable property pledged as security.

I.—Whenever a person shall pledge his land or immoveable property to the Court as security, the *Nazir*, after he has satisfied himself of the sufficiency thereof, shall recapitulate the contents of the title-deeds in his *kyfeut*, stating that he has inspected them, and that they are sufficient, agreeably to the Persian form annexed marked C.*

Nazir to keep a register of all such property.

II.—The *Nazir* shall also keep a register of all property pledged as security agreeably to the form marked D, and shall allow persons, desirous of ascertaining whether any particular property is pledged to the Court, an opportunity of inspecting it.

In the case of estates paying revenue, a notification to be made to Collector with instructions.

III.—Whenever estates paying revenue to Government are pledged to the Court, a notification of the same shall be made to the Collector with a request that in the event of a sale of the same for arrears of public revenue, he will hold the surplus revenue in deposit, notifying the same to the Court, until the Court shall report that the security is released from responsibility.

Forms of security how to be drawn up.

IV.—The forms of security for staying the execution of decrees of this Court shall be invariably drawn up in future agreeably to the annexed forms marked A* and B.*

* The forms A B C prescribed by the above Circular were *Persian* forms, as indicated in the first rule, and as may be seen at pages 113 to 115 of Carrau's Edition of 1853. They are not re-produced here, because the use of *Persian* in civil proceedings has been interdicted by the High Court's Circular No. 16, dated 3rd June, 1864. For the security required under the Sections of the Procedure Code now in force (see 81 to 83 and 338 and 339) forms have been furnished to the Superintendent of Stationery on whom indents should be made.

FORM D.

Register of property pledged as security.

1	2	3	4	5	6	7
Name of Security	Particulars of the property pledged.	Number of case and name of parties in which security is given.	Object of the security and amount with the date of the order requiring it.	Date of the security bond.	Date on which the security was finally settled.	Remarks.

SHERISTADARS.

Circular Order No. 123.
Dated 27th March, 1851.
Duties proposed to be transferred from Judges to Sheristadars.

Transmits to Zillah and City Judges for information the accompanying copy of a Resolution recorded by the Court on the 7th of December, 1849. With reference to the replies which the Court

have received to their Circular No. 8 of the 15th June, 1849, on the subject of certain duties which it was proposed to transfer from the Judges to their Sheristadars.

RESOLUTION of the Presidency Court of Sudder Dewany Adawlut, under date the 7th December, 1849.

Present:

A. Dick, Esquire,
Sir R. Barlow, Bart,
W. B. Jackson, Esq.,
J. R. Colvin, Esq.,
} *Judges.*

J. Dunbar, Esquire, *Officiating Judge.*

Read the replies to the Court's Circular Order No. 8, dated 15th June last.

Under the circumstances and with advertence to the discretion vested in Judges of committing ministerial duties to their subordinates, no new rules to be prescribed.

Referring to the varied nature of the several duties proposed to be transferred from the Judges to their *Sheristadars* and to the difficulty of defining exactly the responsibility of each, should the transfer be made wholly or in part; adverting also to the discretion vested in *Zillah* Judges of committing on their own responsibility purely ministerial duties to their subordinates which Judges exercise, with more or less latitude, according to the individual characters of their *Omlah*, the Court resolve that no new rules* on the subject be prescribed for general observance: Ordered that the several replies be recorded.

(Sd.) B. J. COLVIN, *Register.*

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*Among a Sheristadar's duties are the following, *viz.*, to certify the correctness of copies which are to be attested by the Head Clerk: See HEAD CLERKS, para. 3, at p. 98; also when an order of the Court is not executed within the specified period to bring the fact to notice, and lay the record before the presiding authority: See CIVIL COURTS, Rule III, p. 48; also to compare copies of documents filed in Court with the originals and certify to their correspondence: See ACT VIII OF 1859, para. 22, at p. 10; also to punch stamps and certify to their sufficiency: See STAMPS, paras. 4, 7, & 8.

SMALL CAUSE COURT CASES.

Circular Order No. 176, *Dated* 10*th April*, 1861.
Separate lists to be prepared by Moonsiffs of cases of the Small Cause Court class.

It being the wish of Government that every practical facility should be given to the speedy disposal of cases, which, under Section 3 of Act XLII. of 1860,* would be cognizable by Small Cause Courts, if those Courts could be conveniently introduced into every district. Zillah Judges are requested by the Sudder Court to direct the Moonsiffs in their districts to prepare a separate list of these suits, including all such cases as may have already been instituted since the 1st April, and may be hereafter brought in their Courts.

Three days a week to be set apart for the hearing of such cases, and a monthly return of them to be made.

2. They will also instruct the Moonsiffs to set apart the first three days of every week to the hearing of these cases, and to prepare and transmit a monthly statement in the form appended to this letter, showing the number of suits of this description pending, instituted, and decided, and the monthly progress made in bringing them to a hearing.

Description of the claims comprised by such suits.

3. The particular suits referred to comprise claims for money due, whether on bond or other contract, or for rent of houses (as distinct from rent of land which are cognizable by the Revenue Authorities alone or by Moonsiffs, specially invested with the powers of Deputy Collector under Act X. of 1859,†) or for personal property, or for the value of such property or for damages, when the debt, damage, or demand does not exceed the value of Rs. 300.

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* Superseded by Act. XI. of 1865.

† Repealed by Act VIII. (B.C.) of 1869, as to all Districts in which the latter law is in force.

4. By entering all claims of the description enumerated above in a separate list and by appropriating three days in every week exclusively to the hearing of them, the Court consider these cases may be decided under the new procedure of Act VIII. of 1859 by the Moonsiffs as regularly and as expeditiously as they would be in Courts established under the provisions of Act XLII. of 1860. *

May be decided as regularly and expeditiously as in Small Cause Courts.

5. With the view, moreover, of expediting the hearing of these cases in the Appellate Courts, those decisions are now final by Act XLII. of 1860,* and rendering the passage of them through the ordinary Courts as speedy as possible. The Court also direct that the several Appellate courts of your district, including your own, be required to devote two days in the week to the trial of these particular appeals, and that they be entered in separate lists to be kept for that purpose, and that monthly statements in the form appended be transmitted to the Court, together with those from the Court of first instance for submission to the Government.

Two days in the week to be devoted to the trial of appeals in these cases.

6. You are requested to observe and to inform your subordinates that the separate list of cases to be prepared in compliance with this order, are not to interfere with the general register of civil suits required to be kept up under Section 38 Act VIII. of 1859. These separate lists are in addition to those required by the Act, and for a special purpose.

Separate lists not to interfere with the register enjoined by Section 38 C. P. C.

7. With reference to and in continuation of Circular No. 176, dated the 10th April, 1861, calls attention to the difference in the jurisdiction of the regular civil courts and of the Courts of Small Causes constituted under Act XLII. of 1860.*

Circular Order No. 180.
Dated 15th July, 1861.
Difference in the jurisdiction of regular Civil Courts and Small Cause Courts.

* Now Act XI. of 1865.

8. Under the provisions of Act VIII. of 1859, the jurisdiction of the Regular Civil Courts extends in suits for trifling amounts other than for land to cases where the *cause of action* has occurred within the territorial limits of the Court, while the jurisdiction of the Small Cause Court under Act XLII. of 1860 * is confined to those cases where the defendant resides, or works for hire within the limits of the Court's territorial jurisdiction. †

The former regards in small causes the birth place of the cause of action; the latter place where defendant resides or works for hire.

9. In carrying out the instructions conveyed in Circular No. 176, you should remember that only such cases, as would properly be within the jurisdiction of a Small Cause Court, are to be included in the list therein prescribed, *i. e., cases in which the defendant resides, or works for hire within the Court's territorial jurisdiction.* Cases where the Court has jurisdiction only, because the cause of action has arisen within its territorial limits, should be excluded from the list.

Only cases cognizable by Small Cause Courts to be included.

SMALL CAUSE COURTS.

BY VIRTUE of the powers vested in the Sudder Court, under Section 20 of Act XLII. of 1860, * the following are laid down as the RULES OF PRACTICE FOR COURTS OF SMALL CAUSES:

I.—On presentation of a plaint and verification in accordance with Sections 25, 26, 27, and 28 of Act VIII. of 1859, the Court shall issue under the seal of the Court a summons in the form prescribed in Schedule B of Act VIII. of 1859, which shall be numbered and dated of the day when issued, and shall set forth

Issue of summons—its contents.

* Now Act XI. of 1865.

† "Or if the cause of action arose within the said local limits, and the defendant, at the time of the commencement of the suit, shall, by his servant or agent, carry on business or work for gain within those limits." *Vide* Section 8 Act XI. of 1865.

the names of the plaintiff and defendant, the cause of action and the amount sued for.

Time of service. When returnable.

II.—The summons shall be served on the defendant seven clear days before the day on which the Court shall be holden at which the cause is to be tried unless the Court shall otherwise order; but a summons may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.

Receipt or plaint-note.

III.—A receipt or plaint-note shall, on the filing of the plaint, be given to the plaintiff, containing the number of the summons and of the suit in the Register Book, and no execution shall be issued, nor any money paid out of Court, except on production of the said receipt, or by order of the Judge.

Summons Book and Register.

IV.—The cause of action shall be transcribed from the plaint into the Summons Books, and the substance of the cause of action shall be entered in the Register Book; both books shall be in the form hereto annexed and marked A and B.

Misnomer or error of description in summons.

V.—No misnomer or inaccurate description of any person or place in any such summons shall vetiate the same, if the person or place be therein described so as to be commonly known.

What to be entered in Summons Book.

VI.—The substance of the evidence, the judgment, and the decree shall be entered in the Summons Book, as in form A given in the schedule hereto annexed.

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* Now Section 46 Act XI. of 1865.

VII.—When any order is made for the payment of any debt or damages, costs, or other sums of money by instalments, the same shall be payable at the office of the Clerk, at such periods as the Court shall order, and if no order be made fixing the dates of payments of the instalments, then the first instalment shall become due at the expiration of one calender month from the day of making the order, and every successive instalment at a like period of one calender month from the day of the previous instalments becoming due ; and after default in payment of any instalment, execution may be sued out for the whole amount then remaining unpaid, unless the Court shall otherwise order: provided that such execution shall not issue upon such default, if the instalment or instalments then due shall be paid into Court at any time before excecution is applied for.

Order for payment in instalments. Mode of execution.

VIII.*—" An application for a new trial under Section 21 Act XI. of 1865, in any case in which the amount or value of the subject matter is less than fifty rupees, shall bear a stamp of *one anna*. In other cases it shall bear a stamp of eight annas." (See Clause 10 Schedule B Act XXVI. of 1867.)†

Stamp for application for new trial.

IX.—On an application for a new trial being made, the mode of procedure prescribed by Section 378 of Act VIII. of 1859 for disposing of applications for reviews of judgment shall be followed.

Mode of procedure.

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* The original Rule VIII. was rescinded by High Court's C. O No. 32, dated 19th December, 1865 which substituted a different rule. This again was set aside by C O. No. 35, dated 14th December, 1867, which substituted for it the Rule given in the text.

† Act XXVI. of 1867 (one sentence excepted) has been repealed by the Court Fees Act VII. of 1870; but the provisions in the above Rule have been re-enacted under Schedule II. Article 1 Clauses (a) and (b).

When defendant deposits sum decreed, and moves for new trial.

X.—In cases in which the defendant has moved the Court for a new trial, and has deposited the sum decreed against him as required by Section 12 Act XLII. of 1860, the Court shall detain the money till the new trial be granted, or till such other time as the Court shall order. In the event of notice not being given to the Court as aforesaid, or of the rule being refused, the plaintiff may take the money out of the Court without further delay.

Duty of plaintiff. Consequence of default.

XI.—If the Court be of opinion that a new trial should be granted, the plaintiff shall proceed to set his cause down for re-hearing within six days, unless some other time be granted by the Court, and in default, the defendant shall be at liberty to withdraw his deposit. Should the new trial be granted the order shall be made on such terms as to the payment of costs as the Court shall direct. If, on the hearing of the second trial, the verdict is entered for the plaintiff, the judgment may be satisfied *pro tanto* out of the sum already deposited for debt and costs by defendant, with right of execution against the goods or person of the defendant for the amount payable by the defendant over and above the sum deposited.

Verdict for defendants. Withdrawal of deposit.

XII.—If, on the hearing of the second trial, the verdict is entered for the defendant, he shall be at liberty to withdraw his deposit.

Warrants of execution.

XIII.—No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof; provided that second and successive warrants of execution may be issued by order of the Judge at the expiration of two calendar months from the date of each, on payment of the prescribed costs of execution by the party issuing out the same.

XIV.—Every officer required to execute any warrant of execution, if he shall not have executed such warrant, shall return the same to the office of the Court at the expiration of one month from the date of the issue thereof; and every officer, levying or receiving money by virtue of any process out of the Court, shall forthwith, or as soon after the receipt thereof as practicable, pay over the same to the Court.

Unexecuted warrant. Proceeds of execution.

XV.—No person can be permitted to practise as a pleader in the Courts of Small Causes in the Lower Provinces unless he holds a diploma, or has passed the examination test for the higher or lower grades of pleaders in the Civil Courts.*

Pleaders in Small Cause Courts.

XVI.—With reference to Section 20 Act XLII. of 1860, the forms (*a*) in the *Schedule hereunto* annexed are prescribed for use in the Courts of Small Causes.

Forms.

(*a*) [See for these forms Sutherland's Small Cause Court Rulings, &c. They may all be obtained on indents made upon the Superintendent of Stationery.]

SCHEDULE OF FORMS.

No A 1 (2.)—Summons to Defendant under Section 41 Act VIII. of 1859.

No. A 2 (2.)—Summons to Defendant under Sections 41 and 42 Act VIII. of 1859.

No. A 3 (2.)—Summons to Defendant under Sections 41 and 43 Act VIII. of 1859.

No. A 4 (2.)—Summons to Defendant under Sections 41, 42, and 43 Act VIII. of 1859.

No. 4 (A.)—Form of Judge's order of Reference to an Arbitrator.

No. B (1.)—Warrant of Arrest of the Defendant before judgment under Section 75 Act VIII. of 1859.

No. B (2.)—Writ of Execution of Decree under Section 222 of Act VIII. of 1859.

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* See the Rules passed by the High Court under Section 4 Act XX. of 1865.

No. C (1.)—Hazir-zamin or Bail under Section 76 of Act VIII. of 1859:

No. C (2.)—Form of Mal-zamin-bond to the following.

No. D (1.)—Warrant to Nazir under Section 43 of Act VIII. of 1859.

No. D (2.)—Warrant to Nazir under Section 83 Act VIII. of 1859.

No. D (3.)—Warrant to Nazir under Section 84 of Act VIII. of 1859.

No. E.—Certificate of Refund of Stamp duty of the Petition of Plaint noted below undef Section 98 of Act VIII. of 1859.

No. F (1.)—Notice under Section 107 of VIII. of 1859.

No. F (2.)—Notice to Defendant under Section 113 of Act VIII. of 1859.

No. F (3.)—Notice under Section 163 of Act VIII. of 1859.

No. F 4 (1.)—Notice to Judgment-debtor under Section 216 Act VIII. of 1859.

No. F 4 (2.)—Notice to the Heir or Representative of the Judgment-debtor under Section 216 Act VIII. of 1859.

No. F 5 (1.)—Notice to Decree-holder under Section 274 Act VIII. of 1859.

No. F 5 (2.)—Notice to Decree-holder under Section 274 Act VIII. of 1859.

No. F 6.—Notice to the opposite Party under Section 305 Act VIII of 1859.

No. G.—Deposition.

No. H (1.)—Summons on a Witness under Section 152 Act VIII of 1859.

No. H 2.—Summons to produce Documents under Section 153 Act VIII. of 1859.

No. I 2.—Warrant of Attachment under Section 159 Act VIII. of 1859.

No. J 1.—Warrant of Arrest of Witness under Section 168 Act VIII. of 1859.

No. J 2.—Warrant of Attachment under Section 168 Act VIII. of 1859.

No. K 2.—Decree.

No. N.—Proclamation of sale under Section 249 Act VIII. of 1859.

No. P.—Warrant of attachment and sale of Judgment-debtor's property in execution of decree under Section 250 Act VIII. of 1859.

No. P.—Auction Certificate under Section 259 Act VIII. of 1859.

Notice on application for a new trial.

ORDER FOR A NEW TRIAL.

FORM OF COMMISSION.

WARRANT TO ARREST FOR CONTEMPT.

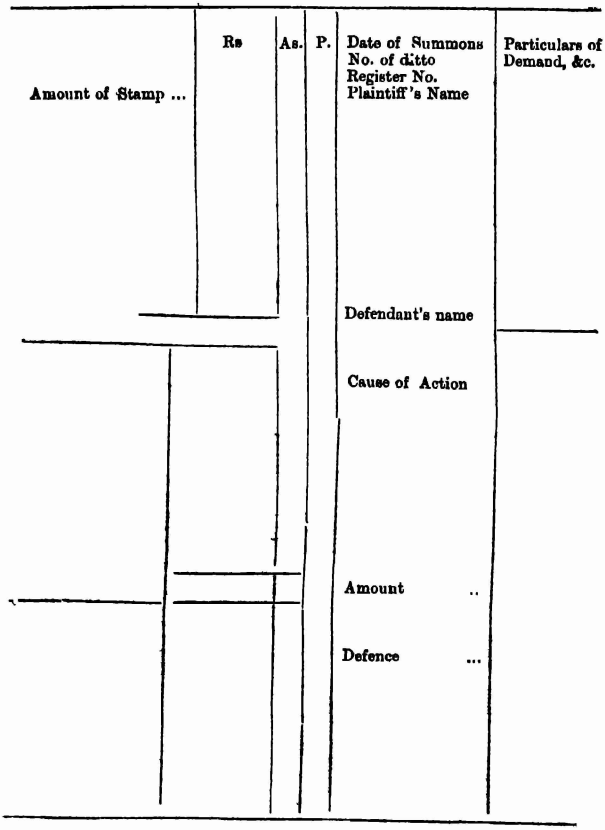
FORM OF RECEIPT

COURT OF SMALL CAUSES of Holden at Register of Causes in the Year 186

Date of presentation of Plaint		
No. of Suit.		
PLAINTIFF	Name.	
	Description.	
	Place of Abode.	
DEFENDANT	Name.	
	Description.	
	Place of Abode.	
Particulars.		
CLAIM.	Amount or value.	Rs. A. P.
	When the cause of action accrued	
APPEARANCE.	Day for parties to appear.	
	Plaintiffs.	
	Defendants.	
JUDGMENT.	Date.	
	For whom	
	For what or amount.	Rs. A. P.
EXECUTION.	Date of application.	
	Date of order	
	Against whom	
	For what and amount of money.	Rs. A. P.
	Amount of costs.	Rs. A. P.
	Amount paid into Court.	Rs. A. P.
	Arrested	
RETURN OF EXECUTION	Minute of other return than payment or arrest and date of every return	

SMALL CAUSE COURT OF

SUMMONS BOOK.



PEON

Substance of Evidence.

Note.—On the reverse side will appear the judgment and decree.

Extract paras. 16 *to* 19 *from the proceedings of the Court of Sudder Dewany Adawlut, dated* 1*st July*, 1861.

1. The Court avail themselves of this opportunity to lay down a few instructions for the guidance of the Judges of Small Cause Courts, and to inform the Judge of Districts of the extent of their authority over the former officers.

Instructions. Extent of District Judge's authority over Small Cause Court Judges.

2. Copies of the "Rules of Practice" for the Courts of Small Causes as laid down by the Court under Section 20 of Act XLII. of 1860, have already been despatched* to each Judge of those Courts, as well as most of the forms to be used, and the remainder of the forms will follow within a few days. The forms are to be adhered to, and when more are required, an indent should be made in the usual way through the Superintendent of Stationery on the Alipore Jail Press. The forms are both in English and the vernacular, so that one or the other may be used, according to circumstances. The Summons and Register Books alluded to in the Rules as A and B need only be kept in one language, which should be English, if possible. The Bengali copies have, however, been sent, in case any Judge, that may be hereafter appointed to any of the Courts, should not be acquainted with the English language. The Judges will receive the Bengali or Urdoo *Gazettes*; and their Courts will be closed on the days when other Civil Courts are closed. The Court is in communication with Government on the subject of the custody of money deposited in the Small Cause Courts,† the taking of security from officers in charge of it, &c., and instructions on the subject will be issued hereafter.

Indents for forms to be made through Superintendent of Stationery. Summons and Register Books to be kept in one language, *i. e.*, (if possible) English, Bengali, and Urdoo *Gazettes*. Holidays. Money deposits. Securities.

* *Vide* Rules in preceding paragraphs

† The Rules now in force are those promulgated with the High Court's C. O. 9, dated 8th March, 1872.

3. Care should be taken to preserve accurately the difference in procedure and jurisdiction between the Small Cause Courts and other Civil Courts. In a Small Cause Court, an abstract of the evidence is only necessary, and the only separate documents, relating to a suit, should, in most cases, be the plaint, the returned summons and any other processes that it may be necessary to issue. The Summons and Register Books will, in these Courts, answer to the record in other Courts, the use of the plaint being merely for the sake of the stamp, there being in the Mofussil Small Cause Courts no institution fee, as there is in Calcutta. Entries having once been made in these books, the plaint will, in all probability, be no longer required. The two sides of half a sheet of foolscap paper in the Summons Book should contain the claim of a plaintiff—the reply of the defendant, such brief substance of evidence, oral or documentary, produced on either side, as the Judge may think it necessary to write down, and the Judge's decision and judgment. Thus a Summons Book, containing 100 sheets of paper, will contain the record of 200 suits, and the same with regard to the Register Book in another form. With regard to jurisdiction, the attention of Small Cause Court Judges is directed to Section 4* of Act XLII. of 1860, and the Judges of districts should remind the Sudder Ameens and Moonsiffs subordinate to them, that if the defendant does not reside or personally work for gain within the local limits of the Small Cause Court, the suit cannot be heard by a Small Cause Court Judge, and must be instituted in one of the old Courts.

Difference of procedure and jurisdiction between Small Cause Courts and other Courts. Use of Summons and Register Books. Stamp for plaint. No institution fee. Jurisdiction.

4. As Section 5† of Act XLII. of 1860 gives no power to the Sudder Court to delegate the authority therein granted, the Judges of the Small Cause Courts must communicate direct

Small Cause Courts to communicate with Sudder Court direct. Copies of statements to be sent to Zillah Judge.

* See Section 8 Act XI. of 1865.
† See Section 1 Act XI. of 1865.

with the Sudder Court whenever they submit their statements; but copies* of the latter should be sent to the Judge of district as the information conveyed in them may be generally useful. It is to be hoped that scarcely any correspondence will be necessary, but whenever it is so, the Judges of the Small Cause Courts will, in that capacity, correspond direct with the Sudder Court. Those officers, who are Principal Sudder Ameens, will, however as such, be subordinate to the District Judge, and all communications that in any way affects their position as Principal Sudder Ameen will be made through that officer. A statement in the form noted in the margin† should be submitted by the Small Cause Court Judges to the Sudder Court monthly, so as to be *received* not later than the 10th of the month following, that to which the statement refers. The first statement should be submitted for the current month. Copies of

Statement of cases on the file of the Court of Small Causes of during 186

Description of Cases.	Pending on the close of	Instituted during the months of	Total under trial during	Decided on the merits or otherwise disposed of	Pending at the close of	How many of these last were pending above six weeks. Cause of delay, and date fixed for further hearing.	REMARKS.
1. Money claims whether on bond or other contract.							
2. Rent of houses ..							
3. Claims for personal property.							
4. Claims for damages							

The 186 *Judge.*

* Certain *annual* returns of work however (Nos. 6, 7, 8 and 10 *Judicial*) are now required to be made by Small Cause Courts to District Judges. See High Court's C. O. No. 5, dated 25th February, 1871.

† Superseded by Forms 1 & 2 prescribed by Circular Order No. 12, dated 19th December, 1862. These again have been modified by Circular Order No. 3, dated 9th February, 1872.

this Resolution will be forwarded to each district and Small Cause Court Judge concerned for information and guidance.

STAMPS.

Circular Order No. 55. Dated Lower and Western Provinces 14th May, 1844.
Neglect of punching.

By an inspection of the records of appealed cases recently received in this Court, it has been ascertained that in some districts the requirements of Circular Order, Sudder Dewany Adawlut No. 16, dated Lower Provinces, 5th, and Western Provinces, 25th May, 1843, are not fulfilled in the manner thereby prescribed among the records adverted to. Stamped papers have been found, from which no portion of the impression has been excised, and thus, under the practice observed in this Court of suffering no paper to pass out of the Record Office without being punched, provided it be such as ought to be punched, extraneous labor is imposed upon the ministerial officers of this Court.

2. It appears, therefore, necessary to the Court to call the attention of the Civil Judges to the Circular Order in question, to impress upon them the importance of those objects of which it was designed to effect the protection, namely, of the state from serious loss and of the community at large from the frauds which are facilitated by the abstraction of stamped papers from old records, and to desire a strict adherence to its directions in future, both on their own part and on that of their subordinates.

Deviation from rules to be noticed.

3. Any deviations from the rules prescribed by the Circular above cited, which may be brought to light after the publication of this order, will be seriously noticed by the Court.

Precis of rules.

4. A precis of the rules on the subject is annexed for convenient reference.

I. *All stamps filed and not liable to be returned,* are to be punched.*

What stamps to be punched.

II. In old cases the duty is to be performed by the *Sheristadar* of the *Zillah* Court, but under the supervision of the Judge.

By whom in old cases.

III. In pending cases the punching is to be effected by the same officer after decision and before consigning them to the Record Office.

By whom in pending cases.

IV. Stamps which may be now filed will be punched by the *Sheristadar* or other officer receiving it, and Judges of all grades, when signing the order for filing, are to see that the rule is observed.

By whom in future.

Blank stamps which are filed to make up for deficient value of any petition, &c.

V. In old cases such stamps are to be destroyed by the *Zillah* Judges, and a certificate of the fact endorsed on the principal stamp.

Blank stamps how to be disposed of.

VI. In pending cases the same course is to be followed after decision, and before consigning them to the Record Office.

Circular Order No. 49.
Dated 23*rd June*, 1854.
Size of punch.

5. The Court direct that the punch with which under paragraph 6 of Circular Order No. 16, dated 5th May, 1843, stamps are defaced, shall in future be not less than one inch in diameter; punches of that size will be immediately substituted for those now in use.

* Section 30 of the Court Fees' Act (VII. of 1870) enjoins cancellation of the stamp in the case of every document requiring a stamp under that Act, before the document is filed or acted on. The High Court's C. O. No. 3, dated 17th January, 1871, draws attention to this provision, and extends it to labels affixed to documents *issued* by Civil Courts.

6. The portion to be defaced will invariably be the centre of the upper colored stamp, care being taken to leave the value of the stamp legible in at least one of the three languages there employed.*

Defacement how to be effected.

7. When, under the permission granted by Circular Order No. 99 of 28th August, 1840, two or more stamp papers are employed to make up the value of the stamp required for the petition,† the entire blank part of those papers on which there is no writing, shall be cut off and destroyed, only the upper portion, containing the colored stamp being preserved in the Nuthee. The Sheristadar will certify that the proper amount of stamp has been furnished on the face of the stamp paper on which the petition is written.

8. The Sheristadar, on whom the duty of punching all stamp papers is imposed, shall certify on the back of the colored stamp in the following form: Punched by me this 22nd June, 1854.

(Sd.) A. B.,
Sheristadar.

SUMMONS.

To the Civil Authorities in the Lower Provinces.

Circular Order No. 206.
Dated 30*th June*, 1862.
Summons to defendant in another district. Needless delay.

It has been brought to the notice of the Sudder Dewany Adawlut that needless delay frequently occurs in the disposal of civil causes, in which it may be necessary to serve a notice upon a defendant residing in another district, and in which

* The cancellation prescribed by Section 30 of Court Fees' Act (1870) is to be effected "by punching out the figure-head so as to leave the amount designated on the stamp untouched."

† The rule now in force is "When the amount of the fee cannot be denoted by a single impressed or a single adhesive stamp, the next lower impressed or adhesive stamp shall be used, and the deficiency made up by one or more additional stamps, which may be either impressed or adhesive." See Finl. Notification No. 1756, dated 8th March, 1872 at p. 425, Part I. *Gazette of India* of 20th April, 1872.

accordingly notice is transmitted by post to the Civil Court of such other district from a practice which obtains of requiring the presence of some person on the part of the plaintiff to point out the defendant.

Return of summons unserved. Alleged causes.

2. The Court are informed that it not unfrequently occurs that notices or summonses are returned to the Court, from which they are received, upon a simple report of the Nazir of the receiving Court, setting forth, firstly, that no one has appeared on the part of the plaintiff to point out the defendant,* and, secondly, that tullubana has not been paid.

Charges of service and return to be provided, including postage.

3. The second objection to the issue of the notice or summons here indicated, should the Court observe, always be provided against by the transmitting Court, which should invariably remit the charge† necessary to cover the service required and the postage chargeable upon its return, together with the notice itself. The Court take the opportunity of pointing out that such processes cannot be sent upon the public service under frank, but that the postage for their transmission and return must be provided by the party requiring their issue. The amount required as tullubana‡ will never be large, for the requisition should be addressed, or forwarded on by post to the local Court which is nearest to the residence of the defendant, or that in whose jurisdiction he is to be found. Thus eight annas would be a high charge for such service which

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Vide High Court's C. O. No. 9, dated 6th April 1871.

† *Vide* High Court's C. O. No. 10A, dated 26th April 1864 and No. 31, dated 25th September 1867. New Rules however are being formed under Section 20 & 22 of the Court Fees Act 1870.

‡ *Vide* High Court's C. O. No 24, dated 31st July 1863, drawing attention to the Money Order agency as a preferable mode of remittance. Later, however, the system of adhesive Court Fees stamps has been made applicable to *tullubana* by C. O. No. 37, dated 22nd December 1870.

would often be executed for a less sum. If no preferable mode of remittance suggest itself, the remittance can always be made by postage stamps not exceeding one anna each in value, which are really saleable. The Court, therefore, hope that the return of unexecuted processes, on the ground of want of tullubana, will cease after these orders have come into effect.

When only, a person should appear to indicate defendant.

4. The first objection, *viz.*, that no person has appeared to indicate the defendant, is, the Court observe, only a valid ground for the return of a notice or summons unserved, where the receiving Court has tried unavailingly, to discover the defendant, and after making all necessary endeavour to serve the process, has been unable to do so. Such cases will be rare, if the transmitting Courts are careful to insert full particulars of name, father's name, caste, profession of the defendant, togewith every necessary particular, indicating the precise place of abode of the person on whom service is required, and this the Court desire that transmitting Courts will always be careful to do.

TOLLS.

Circular Order No. 106.
Dated 25th July, 1845.
Government officers exempted from ferry tolls, when on duty.

In pursuance of the orders of the Government, dated the 9th instant, the following copy of a letter, No. 459 of the 28th ultimo, from the Under-Secretary to the Government of India, in the Home Department, exempting all Government officers from the payment of ferry tolls when proceeding on the public service, is circulated for general information.

"I am directed to acknowledge the receipt of your letter No. 981, dated the 28th ultimo, with its enclosure, and in reply to state for the information of the Right Honorable the Governor of Bengal, that the Governor-General in Council approves of

the proposition submitted by Mr. Dampier, Superintendent of Police, Lower Provinces, and authorizes that all officers of Government be exempted from the payment of ferry tolls within the division to which they may belong, when they are moving in those divisions on the public service, and any officer not entitled to exemption under this definition of the rule who may prefer a claim, to exemption based on the principle which the rule is intended to establish, will refer his claim for special consideration and orders to the department to which he belongs.

TRANSFERS.

Circular Order No. 6.
Dated 23*rd March*, 1853.
Transfers of Uncovenanted Judge from one district or station to another to be reported when desirable. Grounds of necessity therefor.

Forwards for information of Civil and Sessions Judges the accompanying copy of a letter and its enclosure from the Officiating Under-Secretary to Government of Bengal No. 463, dated the 14th instant, and requests their attention to the 2nd paragraph thereof.

COPIES.

I am directed by the Most Noble the Governor of Bengal with reference to the correspondence noted in the margin to forward copy of a Resolution of Government of India, Home Department, dated the 7th January last, the principle laid down in which will be borne in mind.

Letter No. 7030 of 25th March, 1851, to Officiating Register of Sudder Dewany Adawlut.
Letter No. 1668 of 9th August, 1851, to Register of Sudder Dewany Adawlut.
Letter No. 1970 of 17th December, 1851, from Register of Sudder Dewany Adawlut with enclosures.

2nd.—The Civil and Sessions Judges might be directed to report to the Sudder Court, whenever it is desirable in their opinion that an Uncovenanted Judge should be removed from one district or station to another, and the Court would, of course, act upon such representations as the circumstances of each case might seem to require.

I have, &c.,
(Sd.) HODGSON PRATT,
Offg. Under-Secy. to the Govt. of Bengal.

FORT WILLIAM, Home Department (Judicial.)
The 7th January, 1853.

Read again a petition from certain proprietors of landed estate farmers and others, dated 1st February, 1851, representing that evils arise from the present judicial system obtaining in the Mofussil, and suggesting the periodical transfer of Uncovenanted Judges from one station to another.

&c., &c., &c.

RESOLUTION.

In the above petition were alleged grave and unqualified general charges against the whole class of Uncovenanted Judges employed under Government, and although, from their nature, it was impossible that such general charges could be formally investigated, the Governor-General in Council was desirous that every possible inquiry should be made, and that all available information should be obtained, in regard to the working of the Uncovenanted agency employed in the Judicial Department in all the Presidencies with this object; the local Governments were called upon to report their own and their respective Sudder Court's opinions regarding the character and qualifications, as a body of the native judicial officers employed under them. The tenor of the replies, which have been received from the several Presidencies, is such as to convince his Lordship in Council that the charges advanced generally by the petitioner against this useful class of public servants, are greatly exaggerated, and he believes that he may accept with confidence as generally applicable, the gratifying assurance of the Sudder Court of Calcutta that "as a body, the Uncovenanted Judges have advanced, and are greatly advancing in probity, good conduct, and the knowledge requisite for the discharge of their responsible duties."

The petitioners suggest three measures for the remedy of the evils, under which they conceive themselves to labor from defects in the present system.

1st.—The periodical removal from one district to another of the Uncovenanted Judges and the Sheristadars and Peshkars of the Covenanted Civil and Criminal Judges.

2nd.—The extension of the grounds for special appeal.

3rd.—The examination of witnesses in civil cases by the presiding Judge himself.

Of these three measures the last two have been already considered, and will be introduced by two Draft Acts; (one "for law of evidence in the Civil Courts"), which are now under the consideration of Government in the Legislative Department. These two measures, therefore, need not be further noticed now.

In regard to the question of the advantage or disadvantage of the frequent removal of native judicial officers, opinions of the authorities who have been consulted are much divided. On the whole, the Governor-General in Council thinks that Uncovenanted Judges should not be moved

periodically of necessity, or as a matter of course. At the same time he is of opinion that it is really objectionable that such officers should be allowed to remain for an unduly long period at one place.

He believes that, without adopting any such general system of periodical removal from district to district, as is proposed, the Executive Government has it always in its power, unobjectionably to make such changes of posts as taking both the good and the evil of changes into consideration, are believed to be, upon the whole, good for the public service. There are always some stations less desirable than others ; and it is reasonable that for the most part, juniors should commence their service in any grade at other than favorite stations. So also it is very proper that deserving officers, who have done good service in unpopular stations, should be transferred in due time to new desirable places, and whenever it happens that a native Judge has become really less useful by reason of his having been fixed for a great length of time in one society and at one station he should be removed elsewhere, on that account without unnecessarily involving, in a general change, others whose removal will be of no public benefit.

(Sd.) A. R. YOUNG,
Under-Secy. to the Govt. of India.

2. With reference to Circular Order No. 6, dated 23rd March, 1853, requests that in his annual report, each Zillah Judge will take the opportunity to mention to the Court the names of any of the sub-judicial officers in his district, whom he may think it desirable to transfer to a different station, or to any other district, either as a reward for good service according to their own wish, or for the good of the public service, as may seem fit to the Zillah Judge for the reasons stated.

Circular Order No. 29.
Dated 2*nd December*, 1853.
Zillah Judge to mention in his annual report the names of subordinate judicial officers he may think it desirable to transfer.

TRANSLATORS.

In pursuance of the orders of Government, the Court communicate for the information and guidance of Judges in the Lower Provinces that the Translators of their Courts should be

Circular Order No. 99.
Dated 26*th June*, 1857.
Translators to be chiefly employed in the duties for which their appointment was created.

employed, in the first place, and chiefly on those duties for which their appointment was created;* it being, however, open to the Judges discretionally to employ them in other duties after their primary duties are employed, and according to the exigencies of his office.

2. The Court take this opportunity of recommending to Judges the revision of all translations from English into the vernacular, which at present are frequently found to be objectionably performed, so as to be often unintelligible.

Revision of translations into the vernacular.

3. The Court call the attention of the Judges in the Lower Provinces and Deputy Commissioner of Chota Nagpore to their letter No. 1234 of the 25th July, 1853, and request them to conform strictly to the provisions therein laid down, and also in future in all regular suits disposed of by them to direct their translators to translate the pleadings *verbatim et literatim* according to the practice observed by the translators of this Court, so that in the event of an appeal being preferred to this Court, the translation of those pleadings need not be made again.

Circular Order No. 115, Dated the 29th March, 1858.
Pleadings to be translated *verbatim et literatim*. English translation to be filed with nuthee.

[*Copy of letter above alluded to.*]

"I am directed by the Court to request that you will invariably file with the nuthee of each case upon its decision the English translation of the proceedings made by the translators recently experimentally appointed to your office. The Court will thus, in the event of an appeal to them, be enabled to observe the degree of accuracy and skill with which each translation has been made, and at the same time much labor will be saved to the officers employed in the work of translation in this Court."

* First appointed by a special circular to certain districts only, No. 428, dated 29th March 1853.

TRAVELLING ALLOWANCE.

Circular Order No. 112.
Dated 26th April, 1858.
Zillah Judges, when visiting Moonsiffees, may charge for travelling allowance, either 8 rupees *per diem*, or 8 annas per mile.

Forwards for the information of Zillah Judges the accompanying extract from the proceedings of the Government of India in the Financial Department, under date the 26th ultimo, allowing Zillah Judges, when visiting* the Moonsiffees in the interior of their districts, the option of charging for travelling allowance, either at the rate of 8 rupees per diem, or 8 annas per mile.

EXTRACT.

Read an endorsement from the Home Department No. 603, dated the 11th instant, forwarding for consideration and orders, a letter with enclosure, from the Government of Bengal, respecting travelling allowances to Zillah Judges.

Resolution.—The Government of Bengal reports that by the Circular Order of the Sudder Court of 2nd January, 1857, which was issued at the instance of the Lieutenant-Governor, the Zillah Judges were instructed to pay periodical visits to the Courts of the Sub-Judges in the interior of their districts, and as they are sometimes subjected to considerable loss from the rapidity with which their visits are made, the Lieutenant-Governor recommends that the Zillah Judges may be permitted to charge at the rate of 8 annas a mile when going expressly to visit the Moonsiffees in the interior of their district under the orders of the Sudder Court above-mentioned.

The Honorable the President in Council has been pleased to approve of the above proposal.

ORDER.—Ordered that a copy of the foregoing Resolution be communicated to the Home Department in reply to the endorsement from that Department above adverted to.

(Sd.) C. HUGH LUSHINGTON,
Secy. to the Govt. of India.

* The Sudder Court's Circulars on the subject of inspectional tours have been cancelled by the High Court's Circular Order, dated 14th May, 1864 No. 15, which however enforces the travelling allowance provided in the text.

2. Forwards, to the Civil and Criminal Authorities in the Lower Provinces, for information and for communication to the officers subordinate to them, the accompanying copy of an order of the 9th ultimo [No. 76] passed by the Lieutenant-Governor in modification of Circular Order No. 36, dated 6th August, 1856, regarding the rate of travelling allowance to be drawn by ministerial and Police officers, travelling by railway when on duty.

Circular Order No. 153.
Dated 2nd December, 1859.
Travelling allowance to ministerial officers. Railway fare in lieu of mileage. Class of ticket to which entitled.

Order.—A ministerial officer, Police or other subordinate officer travelling on duty, who is entitled under the circumstances, to draw travelling allowance reckoned by mileage shall receive when travelling by Railway, in lieu of mileage rate ,the actual cost of his Railway ticket.

An officer having a salary of Rs. 50 a month and upwards will be entitled to a second class ticket, and less than that sum to a third class ticket.

I have, &c ,
(Sd) H. U. BROWNE,
Under-Secy. to the Govt. of Bengal.

TULLUBANA.

Forwards to the Judges, for the information and guidance of their subordiuates, extract, paragraph 8, from a letter from the Register of the Sudder Dewany Adawlut, to the Secretary to the Government of Bengal, No. 1272, dated the 10th August, 1861.

Circular Order No. 182.
Dated 12th August, 1861.
Tullubana—consequences of not depositing it.

Para. 8.—The Court do not think that any alteration in the law is necessary with regard to the despositing of tullubana. They have already decided in the case noted in the margin* that on an appellant failing to deposit it for the service of summons on the respondent, the case may be struck off the file, and the ruling is equally applicable to a case in the Court of first instance. Attention will be called to the subject, in order that none of the Small Cause Court class of cases may be left undisposed of on such ground.

Sudder Decision No. 172 of 1859,dated 24th March 1860, p. 379.

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